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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Title 3—

Memorandum of July 30, 2009

The President

Guidelines for Human Stem Cell Research

Memorandum for the Heads of Executive Departments and Agencies

As outlined in Executive Order 13505 of March 9, 2009, my Administration is committed to supporting and conducting ethically responsible, scientifically worthy human stem cell research, including human embryonic stem cell research, to the extent permitted by law. Pursuant to that order, the National Institutes of Health (NIH) published final “National Institutes of Health Guidelines for Human Stem Cell Research” (Guidelines), effective July 7, 2009. These Guidelines apply to the expenditure of NIH funds for research using human embryonic stem cells and certain uses of human induced pluripotent stem cells. The Guidelines are based on the principles that responsible research with human embryonic stem cells has the potential to improve our understanding of human biology and aid in the discovery of new ways to prevent and treat illness, and that individuals donating embryos for research purposes should do so freely, with voluntary and informed consent. These Guidelines will ensure that NIH-funded research adheres to the highest ethical standards.

In order to ensure that all federally funded human stem cell research is conducted according to these same principles and to promote a uniform Federal policy across the executive branch, I hereby direct the heads of executive departments and agencies that support and conduct stem cell research to adopt these Guidelines, to the fullest extent practicable in light of legal authorities and obligations. I also direct those departments and agencies to submit to the Director of the Office of Management and Budget (OMB), within 90 days, proposed additions or revisions to any other guidance, policies, or procedures related to human stem cell research, consistent with Executive Order 13505 and this memorandum. The Director of the OMB shall, in coordination with the Director of NIH, review these proposals to ensure consistent implementation of Executive Order 13505 and this memorandum.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be "Samuel" followed by a stylized circular mark and a horizontal line extending to the right.

[FR Doc. E9-18834
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Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2008-0169]

Privacy Act of 1974: Implementation of Exemptions; U.S. Immigration and Customs Enforcement-005 Trade Transparency Analysis and Research (TTAR) System

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a new U.S. Immigration and Customs Enforcement system of records entitled the "U.S. ICE-005 Trade Transparency Analysis and Research (TTAR)" system from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the TTAR system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 5, 2009.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly (202-732-3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, *e-mail:* ICEPrivacy@dhs.gov, or Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 64890, Oct. 31, 2008

proposing to exempt portions of the U.S. ICE-005 Trade Transparency Analysis and Research (TTAR) system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The TTAR system of records notice (SORN) was published concurrently in the **Federal Register**, 73 FR 64967, Oct. 31, 2008, and comments were invited on both the proposed rule and SORN. No comments were received from the public regarding either the SORN or the proposed rule. Therefore, no changes have been made to the rule or the SORN, and DHS is implementing the final rule as published.

In this rule, DHS is claiming exemption from certain requirements of the Privacy Act for TTAR because certain information in the system may contain information about ongoing law enforcement investigations. The TTAR system of records is maintained for the purpose of enforcing criminal laws pertaining to trade by examining U.S. and foreign trade data to identify anomalies in patterns of trade that may indicate trade-based money laundering or other import-export crimes that ICE is responsible for investigating. TTAR contains trade data collected by other Federal agencies and foreign governments, and financial data collected by U.S. Customs and Border Protection (CBP) and the U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN).

These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and of border management and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions published here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and

intelligence agencies. The exemptions do not necessarily apply to all records described in the TTAR SORN. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review" (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to civil or criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or

tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action 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, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: Pub. L. 107-296, 116 Stat. 2135, 6 U.S.C. 101 et seq.; 5 U.S.C. 301, subpart A also issued under 5 U.S.C. 552.

■ 2. At the end of appendix C to part 5, add the following new paragraph 14 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

14. The U.S. ICE-005 Trade Transparency Analysis and Research (TTAR) System

consists of electronic and paper records and will be used by the Department of Homeland Security (DHS). TTAR is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. TTAR contains information that is collected by other federal and foreign government agencies and may contain personally identifiable information. Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is

appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals

may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: July 30, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-18620 Filed 8-4-09; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[FNS-2005-0009]

RIN 0584-AD83

Marketing and Sale of Fluid Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule finalizes the interim rule that implemented the statutory provision to prohibit direct or indirect restrictions on the sale or marketing of fluid milk on school premises or at school-sponsored events, at any time or in any place, in schools participating in the National School Lunch Program. This rule ensures that there are no policies or procedures in place that have the effect of restricting the sale or marketing of fluid milk.

DATES: *Effective Date:* This action is effective September 4, 2009.

FOR FURTHER INFORMATION CONTACT: 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; or (703) 305-2590; or CNDINTERNET@fns.usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 102 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265) amended section 9(a)(2) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758, by adding a provision that prohibits schools participating in the National School Lunch Program (NSLP), or any person approved by a school participating in the NSLP, from directly or indirectly restricting the sale or marketing of fluid milk products at any time or in any

place on school premises or at school-sponsored events. The Food and Nutrition Service (FNS) published an interim rule on November 21, 2005 (70 FR 70031) to prohibit school food authorities (SFAs) from entering into contracts that restrict the sale or marketing of fluid milk.

Contracts between SFAs and vendors can be structured to restrict the variety or types of food choices a school may offer outside of the school meal programs. Prior to implementation of the interim rule, some exclusive vending contracts were found to have the potential to limit a school's ability to sell or market fluid milk on school premises outside of the school meal programs; however, very few if any were found to actually limit the sale or marketing of fluid milk.

The intent of this rule is to ensure no vending contract restricts a school's ability or discretion to provide children access to fluid milk outside of the school meal programs. This rule does not require that participating schools sell or market fluid milk outside of the NSLP, or make fluid milk available at school-sponsored events. Furthermore, this rule does not affect the requirements for offering fluid milk as part of a reimbursable lunch in the NSLP as described in 7 CFR 210.10(m). For additional background information, please refer to the interim rule.

II. Discussion of Public Comments and FNS Response

FNS received a total of eight comments during the 180-day comment period that ended on May 22, 2006. The commenters included representatives from dairy industry trade associations (3), a school food authority (1), a State agency (1), and individuals (3).

Of the eight comments received, six of the commenters, including one individual and the representatives from a school food authority, a State agency, and the trade associations, were in support of finalizing the requirements as established by the interim rule to prohibit any restriction of the sale or marketing of fluid milk in participating schools.

One commenter in support of the provision also felt that the Department should extend the rulemaking to prohibit or restrict all exclusive beverage contracts in participating schools.

Under existing NSLP regulations at 7 CFR 210.21, SFAs must comply with requirements intended to ensure the integrity of procurement practices for the purchase of goods and services with funds from the nonprofit school

foodservice account. Furthermore, NSLP regulations provide SFAs with the flexibility to enter into vending contracts that best meet their needs for foods and beverages sold outside of the school meal programs. This rulemaking is intended to ensure vending contracts do not directly or indirectly restrict the sale or marketing of fluid milk at any time or in any place on school premises or at school-sponsored events. Other procurement issues regarding vending contracts and agreements are outside the scope of this rulemaking.

Two of the individual commenters expressed opposition to implementing the rule as final because of concern that it favors dairy industry interests and inhibits schools' ability to choose whether to sell or market fluid milk. One commenter also disapproved of conventional dairy production practices.

This rulemaking does not require or promote the sale or marketing of fluid milk outside the school meal programs. SFAs retain the authority to establish procurement contracts in accordance with Program regulations for foods sold outside of the school meal programs that best meet the nutritional and operational needs of their students and schools.

Finally, discussion of conventional dairy production practices is outside the scope of this rulemaking.

FNS considered all comments received and determined that these comments did not warrant any changes to the requirements established by the interim rule, or were outside the scope of the interim rule. FNS is issuing the interim rule as final without revision.

III. Procedural Matters

Executive Order 12866

This rule has been determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Implementation of this rule is not expected to impose a significant economic impact on a substantial number of small entities. No later than the beginning of School Year 2006-2007, SFAs were required by section 102 of Public Law 108-265 to ensure that any existing or new vending contracts did not include provisions that restrict the sale or marketing of fluid milk. Therefore, the number of SFAs expected to be impacted by this rule is minimal.

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 Department 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, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice [48 FR 29115, June 24, 1983], this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Since the NSLP is a State-administered, federally funded program, FNS headquarters and regional office staff have ongoing formal and informal discussions with State and local officials regarding program implementation and policy issues. This arrangement allows State and local agencies to provide feedback that contributes to any discretionary decisions made in establishing requirements for rules that govern the NSLP.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's

considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

Civil Rights Impact Analysis

Under USDA Regulation 4300-4, "Civil Rights Impact Analysis," FNS has reviewed this final rule to identify and address any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule does not affect the participation of protected individuals in the Child Nutrition Programs. FNS found no factors that would negatively and disproportionately affect any group of individuals.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain any information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The FNS is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to

provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ Accordingly, the interim rule amending 7 CFR Part 210 which was published at 70 FR 70031 on November 21, 2005, is adopted as a final rule without change.

Dated: July 29, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9-18690 Filed 8-4-09; 8:45 am]

BILLING CODE 3410-30-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC-2008-0663]

RIN 3150-AI53

Industry Codes and Standards; Amended Requirements

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Direct final rule.

SUMMARY: The NRC is amending its regulations governing vessel head inspection requirements. This amendment revises the upper range of the percentage of axial flaws permitted in a specimen set used for the qualification of nondestructive examination systems (procedures, personnel and equipment), which are used in the performance of inservice inspection (ISI) of pressurized water reactor (PWR) upper vessel head penetrations. This amendment is being made as a result of the withdrawal of a stakeholder's recommendation necessitated by a typographical error in the original recommendation with respect to the maximum percentage of flaws that should be oriented axially.

DATES: *Effective Date:* The final rule will become effective October 19, 2009, unless significant adverse comments are received by September 4, 2009. A significant adverse comment is a comment where the commenter explains why the rule would be

inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change (refer to "Direct Final Rulemaking Process" in the Section III of this document for further details). If the rule is withdrawn, timely notice will be published in the **Federal Register**. Submit comments by September 4, 2009. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You can access publicly available documents related to this document by using the following methods.

Federal e Rulemaking Web site: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2008-0663. Address questions about NRC dockets to Carol Gallagher 301 492-3668; e-mail Carol.Gallagher@nrc.gov.

NRC's Public Document (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agency wide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Manash K. Bagchi, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301 415-2905, e-mail manash.bagchi@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion
- III. Direct Final Rulemaking Process
- IV. Voluntary Consensus Standards
- V. Plain language
- VI. Finding of No Significant Environmental Impact: Environment Assessment
- VII. Paperwork Reduction Act Statement
- VIII. Regulatory Analysis
- IX. Regulatory Flexible Certification
- X. Backfit Analysis

XI. Congressional Review Act

I. Background

The NRC published a proposed rule on April 5, 2007 (72 FR 16731), to incorporate by reference the 2004 Edition of Section III, Division 1, of the American Society of Mechanical Engineers (ASME) Boiler Pressure Vessel (BPV) Code, and the 2004 Edition of the ASME Operation and Maintenance (OM) Code to provide updated rules for constructing and inspecting components and testing of pumps, valves, and dynamic snubbers in light water nuclear power plants. The proposed rule, among other things, also incorporated by reference augmented examination requirements of PWR reactor vessel head penetration nozzles of ASME Code Case N-729-1, "Alternative Examinations Requirements for PWR Vessel Upper Heads with Nozzles Having Pressure Retaining Partial Penetration Welds, Section XI, Division I" as conditioned by the NRC. As part of these conditions, the NRC imposed a qualification program for volumetric inspections to ensure examinations were effective in identifying axial and circumferential stress corrosion cracking in the penetration nozzles. The NRC qualification program included a requirement for the distribution of cracks within a qualification specimen set. Essentially a qualification specimen set is a group of nozzle mockup flaws which are used as part of a test to qualify inspectors, procedures and equipment. The NRC qualification program, as stated in the proposed rule, required, "at least 30 percent, but no more than 60 percent of the flaws must be oriented axially," with the remaining flaws oriented circumferentially by default.

During the public comment period of the proposed rule, Mr. Jack Spanner of the Electric Power Research Institute (EPRI), program manager of the industry generic qualification program for volumetric inspection of vessel head penetration nozzles, submitted a comment dated June 19, 2007 (ML071710637). Mr. Spanner requested that the proposed rule's flaw distribution percentages be changed to be at least 20 percent, but no more than 40 percent of the flaws to be oriented axially. Mr. Spanner's basis for this change, as well as other recommendations, was that the requirements of the proposed rule would require the construction of additional mockups.

The NRC reviewed the requested change to ensure that if implemented, the qualification process would remain

effective. The NRC concluded that the specific required number of axial flaws in a specimen set may have some variation so long as a range was defined to ensure both axial and circumferential flaws in a specimen set, and a specific set value was not assigned that would limit the effectiveness of a blind qualification program. The NRC found that Mr. Spanner's request met these criteria. Therefore, given the reduced burden by allowing the use of current or planned mockups, the NRC included the proposed change in the final rule (72 FR 52370; September 10, 2008.)

II. Discussion

After the final rule was published, an e-mail was submitted to the NRC on behalf of Mr. Spanner dated September 12, 2008 (ML091410089). Mr. Spanner informed the NRC that, after he submitted his original recommendation with respect to the maximum percentile range of axial flaws, he identified a typographical error. Mr. Spanner had only intended to recommend a change to the minimum axial flaw distribution percentage from 30 to 20 percent, and did not intend to recommend a change in the maximum value of flaws from 10 to 40 percent. Mr. Spanner also stated that use of the maximum value of 40 percent would require additional mockups to be created in order to meet the NRC volumetric inspection qualification program at EPRI. As a result, he requested the maximum percentage be returned to the proposed rule limit of 60 percent.

In reviewing Mr. Spanner's latest proposal, the NRC continues to believe that the specific value for the number of axial flaws within a specimen set is open to variation, so long as a reasonable distribution is maintained. The newly proposed distribution range of 20 percent to 60 percent of axial flaws allowed 80 percent to 40 percent of the total specimen set flaws to be circumferentially orientated. The NRC finds that the newly proposed range maintains a reasonable distribution of circumferential and axial flaws, and does not limit the effectiveness of a blind qualification test by being too prescriptive. Therefore, the NRC concludes that the distribution range, modified as recommended by Mr. Spanner, continues to meet the NRC defined criteria for an effective qualification specimen set. Given this conclusion and the representation by Mr. Spanner that using the current rule's maximum axial flaw distribution range of 40 percent would require the creation of additional mockups, the NRC determined that the maximum distribution of allowable axial flaws in

the specimen set should be changed from 40 percent to 60 percent. The NRC believes, in light of the September 1, 2009, deadline for implementation of the qualification requirement for volumetric inspection of vessel head penetration nozzles, that the time and resources necessary to design and prepare additional mockups compliant with the current rule, and to complete qualification of personnel, procedures, and equipment represents a significant burden on the licensee with no significant safety benefit. The NRC concludes that the maximum qualification specimen set axial flow distribution should be changed from 40 to 60 percent.

III. Direct Final Rulemaking Process

The NRC is using the “direct final rule procedure” to issue this action because this action is minor, and is not expected to be controversial. The NRC does not expect any adverse comments for two reasons. First, as discussed in the discussion of the reasons for this rulemaking, the change in the maximum axial flaws which must be included in the qualification sample has no adverse impact on safety. The NRC has no reason to believe that any external stakeholder disagrees with the NRC’s determination in this regard, and consequently does not expect any stakeholder to submit adverse comments on this change. In addition, the NRC’s action to change the current requirement on axial flow distribution was initiated in response to a comment from a representative of the industry group responsible for the development of the welding qualification program for the industry. This increases the NRC’s confidence that the proposed change is not controversial and will not result in significant adverse comments. Second, the rule change represents a burden reduction for licensees. Thus, the NRC does not expect any adverse comment from these stakeholders with respect to the rule change enabling the burden reduction. Accordingly, the NRC finds that there is good cause under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B) for avoiding notice and opportunity for public comment on the direct final rule. The amendment to the rule will become effective on October 19, 2009. However, if the NRC receives significant adverse comments by September 4, 2009, then the NRC will publish a document that withdraws this action. In that event, the comments received in response to this amendment would then be considered as comments on the companion proposed rule published elsewhere in this **Federal Register**, and the comments will be

addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. Public Law 104–113 requires Federal agencies to use industry consensus standards to the extent practical; it does not require Federal agencies to incorporate by reference a standard into the regulations in its entirety. The law does not prohibit an agency from generally adopting a consensus standard while taking exception to specific portions of the standard if those provisions are deemed to be “inconsistent with applicable law or otherwise impractical.” Furthermore, taking specific exceptions furthers the Congressional intent of Federal reliance on voluntary consensus standards because it allows the adoption of substantial portions of consensus standards without the need to reject the standards in their entirety because of

limited provisions which are not acceptable to the agency.

The NRC is amending its regulations to revise the reactor vessel head inspections specimen set specifications necessitated by the withdrawal of a stakeholder’s recommendation, incorporated in the 2008 final rule (73 FR 52730), which contained a typographical error. This latest amendment is consistent with specimen set distribution under Appendix VIII of Section XI of the ASME Code, a national consensus standard. The 2008 final rule incorporated by reference the latest edition of Section III and XI of the ASME BPV Code and ASME OM Code, for construction, ISI, and in-service testing of nuclear power plant components. ASME BPV and OM Codes are national consensus standards developed by participants with broad and varied interests, in which all interested parties (including the NRC and licensees of nuclear power plants) participate. If the NRC did not conditionally accept ASME Code Editions and Addenda, it would disapprove these items entirely. The effect would be that licensees would need to submit large number of requests for the NRC’s approval of alternatives under 10 CFR 50.55a(a)(3). This would constitute an unnecessary additional burden for both the licensees and the NRC. Similarly, not adopting the modification in this final rule may result in a large number of relief requests without any compensating safety benefits. For these reasons, the NRC concludes that the treatment of ASME Code Editions and Addenda, and conditions placed in this final rule does not conflict with any policy on agency use of consensus standards specified in Office of Management and Budget Circular A–119.

V. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled “Plain Language in Government Writing,” directed that the Government’s writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** of this document.

VI. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined that this direct final rule is the type of action described as a categorical exclusion in § 51.22(c)(2), which states, “amendments to the regulations which are corrective or of a minor or nonpolicy

nature and do not substantially modify existing regulations, and actions on petition for rulemaking relating.” This amendment revises the upper range of the percentage of axially orientated flaws permitted in a specimen set used in the qualification of nondestructive examination systems for performance of reactor vessel head penetration inspections, and is corrective in nature and does not modify the intent of the existing regulation. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

VII. Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VIII. Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule. This rule amends the NRC regulations to correct the upper range of the percentage of axially oriented flaws permitted in a specimen set used in the qualification of nondestructive examination systems, which are used in the performance of reactor vessel head inspections. This amendment does not impose any new burden or reporting requirements on the licensee or NRC for compliance. Also, this rule does not involve an exercise of Commission discretion and, therefore does not necessitate preparation of a regulatory analysis.

IX. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this Amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the Small Business Size Standards set forth in

regulations issued by the Small Business Administration at 13 CFR Part 121.

X. Backfit Analysis

As described previously, the final rule imposed augmented examination requirements for PWR reactor vessel head penetrations by incorporation by reference of ASME Code Case N–729–1. In the final rule, the NRC concluded that the requirements of Code Case N–729–1, with the limitations and conditions denoted by the rule, represents an acceptable approach developed by a voluntary consensus standards organization for performing future RPV head and head penetration inspections. Accordingly, the NRC concluded that approval of Code Case N–729–1, with the limitation and conditions denoted by that rule, by incorporation by reference of that Code Case into § 50.55a, constitutes a redefinition of the requirements necessary to provide reasonable assurance of adequate protection of public health and safety. As such, no backfit analysis was prepared for that portion of the final rule, under § 50.109(a)(4)(iii).

The NRC is using the direct final rule procedure to amend NRC regulations to revise the upper range of the percentage of axially oriented flaws permitted in a specimen set for the qualification of nondestructive examination systems used in the performance of reactor vessel head inspections as a result of withdrawal of a stakeholder’s recommendations due to a typographical error. This amendment revises the upper range of the percentage of axial flaws permitted in a specimen set § 50.55a(g)(6)(D)(4)(ii) from 40 percent to 60 percent, the same as in the proposed rule on this subject (72 FR 16731). This requirement, i.e. an upper range of 60 percent, is similar to specimen set distribution under Appendix VIII of Section XI of the ASME Code. The NRC continues to find that the requirements of Code Case N–729–1, with the limitations and conditions denoted by this rule, represents an acceptable approach developed by a voluntary consensus standard organization. Therefore, a backfit analysis has not been prepared for this direct final rule, under § 50.109(a)(4)(iii).

XI. Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory

Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 50.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 as amended by Public Law 102–846, Sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Public Law 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.55a, paragraph (g)(6)(ii)(D)(4)(ii) is revised to read as follows:

§ 50.55a Codes and Standards

*	*	*	*	*
(g)	*	*	*	
(6)	*	*	*	
(ii)	*	*	*	
(D)	*	*	*	
(4)	*	*	*	

(ii) The specimen set must have a minimum of ten (10) flaws which provide an acoustic response similar to PWSCC indications. All flaws must be greater than 10 percent of the nominal pipe wall thickness. A minimum of 20 percent of the total flaws must initiate from the inside surface and 20 percent from the outside surface. At least 20 percent of the flaws must be in the depth ranges of 10–30 percent through wall thickness and at least 20 percent within a depth range of 31–50 percent through wall thickness. At least 20 percent and no more than 60 percent of the flaws must be oriented axially.

* * * * *

Dated at Rockville, Maryland, this 24th day of July 2009.

For the Nuclear Regulatory Commission.

Bruce S. Mallett,

Acting Executive Director for Operations.

[FR Doc. E9–18546 Filed 8–4–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0509 Directorate Identifier 2009–CE–029–AD; Amendment 39–15985; AD 2009–16–02]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Limited Model PC–7 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) 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:

This Airworthiness Directive (AD) is prompted due to reported corrosion on the bolts and in the bores of the attachment fittings for the engine mounting frame. The corrosion is caused by damaged cadmium plating of the bolts or damaged surface finish of the attachment fitting.

Such a condition, if left uncorrected, could lead to crack initiation at the bolt and the fitting bore and subsequently to the failure of the engine attachment fitting.

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

DATES: This AD becomes effective September 9, 2009.

On September 9, 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 Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: 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 June 5, 2009 (74 FR 26994). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is prompted due to reported corrosion on the bolts and in the bores of the attachment fittings for the engine mounting frame. The corrosion is caused by damaged cadmium plating of the bolts or damaged surface finish of the attachment fitting.

Such a condition, if left uncorrected, could lead to crack initiation at the bolt and the fitting bore and subsequently to the failure of the engine attachment fitting.

In order to correct and control the situation, this AD requires a visual inspection of the relevant bolts and fittings. Additionally, the replacement of the bolts is required.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use

different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD will affect 10 products of U.S. registry. We also estimate that it will take about 4.5 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 \$6,600 or \$660 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 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 adding the following new AD:

2009-16-02 Pilatus Aircraft Limited:

Amendment 39-15985; Docket No. FAA-2009-0509; Directorate Identifier 2009-CE-029-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 9, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PC-7 airplanes, all manufacturer serial numbers, certificated in any category.

Subject

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

Reason

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

This Airworthiness Directive (AD) is prompted due to reported corrosion on the

bolts and in the bores of the attachment fittings for the engine mounting frame. The corrosion is caused by damaged cadmium plating of the bolts or damaged surface finish of the attachment fitting.

Such a condition, if left uncorrected, could lead to crack initiation at the bolt and the fitting bore and subsequently to the failure of the engine attachment fitting.

In order to correct and control the situation, this AD requires a visual inspection of the relevant bolts and fittings. Additionally, the replacement of the bolts is required.

Actions and Compliance

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

(1) Visually inspect the bolts and the bores (with boroscope) of the attachment fittings for the engine mounting frame following paragraph 3.A of PILATUS Aircraft Ltd. Pilatus PC-7 Service Bulletin No. 53-006, dated November 17, 2008, at whichever of the following occurs later:

(i) Upon accumulating 5,000 hours total time-in-service (TIS) or 5 years from the date of manufacture, whichever occurs first; or

(ii) Within the next 6 months after September 9, 2009 (the effective date of this AD).

(2) If no sign of corrosion is found during the inspection required in paragraph (f)(1) of this AD, before further flight, replace the bolts. Repetitively inspect thereafter at intervals not to exceed every 5 years following PILATUS Aircraft Ltd. Pilatus PC-7 Maintenance Manual Chapter 05-10-20, page 4, dated November 30, 2008.

(3) If any sign of corrosion is found during any of the inspections required in paragraphs (f)(1) and (f)(2) of this AD, before further flight, do the corrective actions following paragraph 3.A. of PILATUS Aircraft Ltd. Pilatus PC-7 Service Bulletin No. 53-006, dated November 17, 2008. Repetitively inspect thereafter at intervals not to exceed every 5 years following PILATUS Aircraft Ltd. Pilatus PC-7 Maintenance Manual Chapter 05-10-20, page 4, dated November 30, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: 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.

Related Information

(h) Refer to MCAI FOCA AD HB-2009-004, dated May 12, 2009; PILATUS Aircraft Ltd. Pilatus PC-7 Service Bulletin No. 53-006, dated November 17, 2008; and Pilatus PC-7 Maintenance Manual Chapter 05-10-20, page 4, dated November 30, 2008, for related information.

Material Incorporated by Reference

(i) You must use PILATUS Aircraft Ltd. Pilatus PC-7 Service Bulletin No. 53-006, dated November 17, 2008; and Pilatus PC-7 Maintenance Manual Chapter 05-10-20, page 4, dated November 30, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation 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: snolan@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 23, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-18210 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2007-0051; Directorate Identifier 2007-NE-37-AD; Amendment 39-15986; AD 2009-16-03]

RIN 2120-AA64

Airworthiness Directives; Teledyne Continental Motors (TCM) IO-520, TSIO-520, and IO-550 Series Reciprocating Engines With Superior Air Parts, Inc. (SAP) Cylinder Assemblies Installed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain TCM IO-520, TSIO-520, and IO-550 series reciprocating engines, with certain SAP investment cast cylinder assemblies installed. This AD requires initial and repetitive inspections and compression tests to detect cracks in those cylinders with more than 750 flight hours (FH) time-in-service (TIS). This AD results from reports of cracks in the area of the exhaust valve and separation of cylinder heads from the barrels of SAP cylinder assemblies with certain part numbers. We are issuing this AD to prevent the separation of the cylinder head, which could result in immediate loss of engine power, possible structural damage to the engine, and possible fire in the engine compartment.

DATES: This AD becomes effective September 9, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 9, 2009.

ADDRESSES: You can get the service information identified in this AD from Teledyne Continental Motors, Inc., P.O. Box 90, Mobile, Alabama; telephone (251) 438-3411, or go to: <http://www.genuinecontinental.aero>.

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

FOR FURTHER INFORMATION CONTACT: Peter W. Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76137; e-mail: peter.w.hakala@faa.gov; telephone (817) 222-5145; fax (817) 222-5785.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain TCM IO-520, TSIO-520, and IO-550 reciprocating engines with SAP investment cast cylinder assemblies, part numbers (P/Ns) SA52000-A1, SA52000-A20P, SA52000-A21P, SA52000-A22P, SA52000-A23P, SA55000-A1, or SA55000-A20P, installed. We published the proposed AD in the Federal Register on April 11, 2008, (73 FR 19772). That action proposed to require initial and repetitive inspections and compression tests to detect cracks in those cylinders with more than 750 FH TIS.

Examining the AD Docket

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

Comments

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

Requests to Not Issue an AD Against the SAP Cylinders

Four commenters suggest we not issue an AD against the SAP cylinders because the SAP cylinder assemblies have a lower failure rate than the OEM cylinder assemblies. One commenter suggests that SAP should issue a detailed service bulletin to address the service difficulty conditions.

We don't agree. We confirmed that nine SAP cylinder assemblies failed with a head separation condition, which could result in loss of control of the airplane. Superior Air Parts, Inc. investigated the cause for the failure of the cylinder assemblies. Because the cylinder assemblies failed with a separation condition from propagation of metal fatigue cracks, we determined that this failure condition is a direct safety hazard to the airplane. This proposed AD is necessary to ensure that these cylinder assemblies are periodically inspected, and removed from service at engine overhaul to prevent this unsafe condition. We did not change the AD.

Absence of Data To Show Serial Number Distribution

One commenter suggests we examine the distribution of the cracks across the range of serial numbers and perform a statistical analysis to try to identify a process change or a design change that may be a contributor to the failed SAP cylinder assemblies.

We agree. We examined the distribution of the cracks, and collected and analyzed in service data of the cylinder assemblies. We found the failed cylinder assemblies were not in any specific serial number sequence. The failed serial numbers ranged from low to high within the serial number range, so the time to failure of the cylinder assemblies were unpredictable. We did not change the AD.

Requests To Change 50-Hour Inspections to 100-Hour or Annual Inspections

Twenty commenters suggest that requiring a 50-hour repetitive inspection for cylinder leaks is unnecessary and burdensome at 50-hour intervals. The commenters suggest that we change the repetitive inspection requirements to allow performing the inspections at the 100-hour or annual inspections.

We don't agree. We selected a 50-hour inspection interval so we can detect leaks and replace the cylinder before a head separation occurs. By removing leaking cylinder heads discovered with the periodic 50-hour inspections, the probability of having an in-flight separation is greatly reduced. Also, the 50-hour inspection coincides with the scheduled maintenance for normal engine oil and filter changes. The costs of compliance in the NPRM included costs for the additional cylinder assembly inspections. We did not change the AD.

Suggestion To Replace All SAP Cylinders With Fewer Than 823 Hours Time-In-Service

One commenter suggests that we require replacing all SAP cylinders with fewer than 823 hours TIS. The commenter states that because of a lack of engineering data to justify the proposed corrective action, we should require removing all the remaining cylinder assemblies now in service, at no later than 823 hours TIS.

We don't agree. The lowest TIS of a failed cylinder assembly is 823 hours TIS. Many of the cylinders have operated well past 823 hours TIS and some to the time-between-overhaul limit. The initial 25 hour TIS inspection and subsequent 50 hour inspections will provide satisfactory safety oversight to

prevent future head separations without putting an unnecessary burden on the public by requiring replacing all 23,000 of the SAP cylinders produced. We did not change the AD.

Request To Increase the Fuel-Air Ratios on TCM Engines That Use SAP Cylinders

One commenter states the corrective action should be an immediate FAA authorization to increase the full power fuel flows above the type certificate limits as necessary to return the fuel-air ratios to those of stock TCM engines. The commenter stated that the SAP cylinders are not direct replacements for TCM cylinders because of their increased volumetric efficiency (more air without more fuel).

We don't agree. Superior Air Parts, Inc. has not made any public claims of increased horsepower or increased volumetric efficiency for the cylinders. Testing during certification of the SAP cylinders did not reveal any appreciable power output difference, outside of normal variation. While it may be due to a slightly higher volumetric efficiency, as compared to the original equipment manufacturer's (OEM) cylinders, the observed and resulting temperature differences were not of such a magnitude as to cause a safety of flight issue. The SAP cylinders are subject to the same FAA-approved cylinder head temperature limitation as the OEM cylinders. Both the SAP cylinders and the OEM cylinders were certified and approved to operate continuously at the maximum certificated temperature. We did not change the AD.

Observation That a Large Number of SAP Cylinder Failures Occurred in Alaska

Six commenters state that a large number of SAP cylinder assembly failures occurred in Alaska among commercial operators that had airplanes with high-usage rates. They state that the operators have high-thermal cycles per hour. The commenters define a thermal cycle as an engine start, an aircraft takeoff, an aircraft landing, and an engine shutdown. One of the commenters stated that shock heating is far more destructive than shock cooling. Another commenter stated that their facility has installed the affected investment cast cylinders on hundreds of aircraft and has operated in an environment that would be expected to be as adverse as any other identifiable operating environment as measured by three critical engineering parameters:

(1) The average repetitive internal temperature experienced by the cylinder head,

(2) The number of thermal cycles, and

(3) The magnitude of the maximum cylinder head temperature during exposure to peak thermal cycles.

That commenter goes on to state that they haven't encountered any cracks in this population of SAP cylinders over the last decade.

We accept these comments as possible metallurgical explanations for fatigue cracks starting and growing, however; other engine operating conditions could contribute to metal fatigue failures. We did not change the AD.

Type of Cylinder Head Casting Questioned

One commenter asks if the cylinder head casting is a sand casting or an investment casting. The commenter states that the AD should specify the type of casting. The commenter also asks that the proposed AD should state that most failures were due to a high number of thermal cycles for the total number of engine operating hours. The commenter states that a thermal cycle should be defined as "an engine start up, airplane takeoff, airplane landing, and an engine shutdown" and not as a "high ratio of take offs and landings per flight hour."

We partially agree. The proposed AD does state that the cylinder assemblies have an investment cast aluminum head. After additional research, we agree that a high number of thermal cycles, for example engine start up, airplane takeoff, airplane landing, and engine shutdown can increase the thermal fatigue of the cylinder assemblies. However, the number of engine starts and thermal cycles are not recorded and cannot be correlated. We changed the AD for clarity to refer to the cylinder heads as "investment cast," and provided a process in paragraph (f) for determining the cylinder P/N if it is not in the engine records.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 8,000 engines installed on airplanes of U.S. registry. We also estimate that it will take about 5 work-hours per

cylinder to perform the actions, and that the average labor rate is \$80 per work-hour. Required parts will cost about \$1,150 per cylinder. Based on these figures, we estimate the total cost of this AD to U.S. operators to be \$12,400,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009-16-03 Superior Air Parts, Inc. (SAP): Amendment 39-15986. Docket No. FAA-2007-0051; Directorate Identifier 2007-NE-37-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 9, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Teledyne Continental Motors (TCM) IO-520, TSIO-520, and IO-550 series reciprocating engines with SAP investment cast cylinder assemblies, part numbers (P/Ns) SA52000-A1, SA52000-A20P, SA52000-A21P, SA52000-A22P, SA52000-A23P, SA55000-A1, or SA55000-A20P, installed. These engines are installed on, but not limited to, the airplanes listed in Table 1 of this AD.

TABLE 1—TELEDYNE CONTINENTAL MOTORS-RELATED AIRCRAFT MODELS

Engine model	Aircraft manufacturer	Aircraft model designation
IO-520-A	Cessna	210 D, E, F, G, & H.
IO-520-A	Cessna	206.
IO-520-A	Cessna	P206.
IO-520-A	Rockwell	200 D.
IO-520-B	Beechcraft	36 Bonanza.
IO-520-B	Beechcraft	A36.
IO-520-B	Navion	Range Master.
IO-520-BA	Beechcraft	A36.
IO-520-BA	Beechcraft	S & V35, V35A, V35B.
IO-520-BA	Beechcraft	C33 A.
IO-520-BA	Beechcraft	E33 A & C.
IO-520-BA	Beechcraft	F33 A & C.
IO-520-BA	Navion	Range Master.
IO-520-BB	Beechcraft	A36.
IO-520-BB	Beechcraft	V35B.
IO-520-BB	Beechcraft	F33 A.
IO-520-C & CB	Beechcraft	C55-E55 Baron.
IO-520-D	Bellanca	17-30 Viking.
IO-520-D	Cessna	A188-300 AG Truck.
IO-520-D	Cessna	185.
IO-520-E	(Cessna 310)	Exec 600.
IO-520-E	(Beech Baron)	Pres 600.
IO-520-F	Cessna	207.
IO-520-F	Cessna	U206.
IO-520-K	Bellanca	17-30A.
IO-520-L	Cessna	210 K, L, M, N & R.
IO-520-L	Cessna	210N II.
IO-520-L	Cessna	210R.
IO-520-M	Cessna	310R.
IO-520-MB	Cessna	310R.
IO-550-A	Cessna	310 Conversion.
IO-550-B	Beechcraft	A36.
IO-550-B	(Beech Bonanza)	Foxstar.
IO-550-C	Beechcraft	58 Baron.
IO-550-D	Cessna	185/188 Conversion.
IO-550-E	Cessna	310 Conversion.
IO-550-F	Cessna	206/207 Conversion.
IO-550-L	Cessna	210 Conversion.

Unsafe Condition

(d) This AD results from reports of cracks in the area of the exhaust valve and separation of cylinder heads from the barrels of SAP cylinder assemblies with certain part numbers. We are issuing this AD to prevent the separation of the cylinder head, which could result in immediate loss of engine power, possible structural damage to the engine, and possible fire in the engine compartment.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified unless the actions have already been done.

Inspecting SAP Cylinder Assemblies

(f) If the engine records don't contain the P/N of the cylinder heads, do the following:

(1) Remove the valve cover from the cylinder assembly.

(2) Look at the cylinder head for the P/N SAC 52001 I or SAC 55001 I and the word "AMCAST."

(g) For TCM IO-520, TSIO-520, and IO-550 series reciprocating engines with SAP investment cast cylinder assemblies, P/Ns SA52000-A1, SA52000-A20P, SA52000-A21P, SA52000-A22P, SA52000-A23P,

SA55000-A1, or SA55000-A20P, installed, with over 750 flight hours (FH) time-in-service (TIS), do the following within 25 FH TIS after the effective date of this AD:

(1) Inspect each cylinder head around the exhaust valve side for visual cracks or any signs of black combustion leakage.

(2) Replace any cracked or leaking cylinders before further flight.

(3) Perform a standard cylinder compression test. Guidance on standard cylinder compression tests can be found in Teledyne Continental Aircraft Engine Service Bulletin SB03-3, Differential Pressure Test and Borescope Inspection Procedures for Cylinders, dated March 28, 2003.

(i) If the cylinder pressure gauge reads below 60 pounds per-square inch, determine if the unacceptable pressure is due to a cracked cylinder.

(ii) To check the cylinder, apply a 2 percent soapy water solution to the side of the leaking cylinder.

(iii) If you see air bubbles, indicating air leakage, on the side of the cylinder head, or near the head-to-cylinder interface, replace the cylinder assembly before further flight.

(h) Thereafter, repeat the cylinder visual inspections and compression tests within 50 FH time-since-last inspection (TSLI) until the cylinders reach their time-between-overhaul (TBO) limits specified in Teledyne Continental Aircraft Engine Service Information Letter SIL98-9A, Revision A, dated March 28, 2003.

Replacing SAP Cylinder Assemblies

(i) For TCM IO-520, TSIO-520, and IO-550 series reciprocating engines with SAP investment cast cylinder assemblies, P/Ns SA52000-A1, SA52000-A20P, SA52000-A21P, SA52000-A22P, SA52000-A23P, SA55000-A1, or SA55000-A20P, replace the SAP cylinder head assembly at the first TBO after the effective date of this AD. Engines that were already overhauled may continue in service until the first TBO after the effective date of this AD.

Prohibition Against Installing Certain P/N SAP Cylinder Assemblies

(j) After the effective date of this AD, do not install any SAP investment cast cylinder assembly, P/Ns SA52000-A1, SA52000-A20P, SA52000-A21P, SA52000-A22P, SA52000-A23P, SA55000-A1, or SA55000-A20P, in any engine.

Alternative Methods of Compliance

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

Special Flight Permits

(l) Under 14 CFR part 39.23, we will not approve special flight permits for this AD for engines that have failed the visual inspection or the 50 hour periodic cylinder assembly compression test required by this AD.

Related Information

(m) Teledyne Continental Service Bulletin No. SB03-3 "Differential Pressure Test and Borescope Inspection Procedures for Cylinders", dated March 28, 2003.

(n) Contact Peter W. Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76137; e-mail: peter.w.hakala@faa.gov; telephone (817) 222-5145; fax (817) 222-5785, for more information about this AD.

Material Incorporated by Reference

(o) You must use Teledyne Continental Aircraft Engine Service Information Letter SIL98-9A, Revision A, dated March 28, 2003 to determine the times-between-overhaul required by this AD. The Director of the Federal Register approved the incorporation by reference of this service information in

accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Teledyne Continental Motors, Inc., P.O. Box 90, Mobile, Alabama; telephone (251) 438-3411, or go to: <http://www.genuinecontinental.aero>, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Burlington, Massachusetts, on July 23, 2009.

Peter A. White,

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

[FR Doc. E9-18220 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0168; Directorate Identifier 2007-SW-33-AD; Amendment 39-15977; AD 2009-15-14]

RIN 2120-AA64

Airworthiness Directives; Agusta S.p.A. Model AB139 and AW139 Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified Agusta S.p.A. (Agusta) Model AB139 and AW139 helicopters. 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 aviation authority of Italy, with which we have a bilateral agreement, states in the MCAI that during the installation of a fire extinguisher bottle on a new helicopter, it was found that the electrical receptacle/connectors on the bottle which commands the firing of the extinguishing agent were swapped between engines No. 1 and No. 2. This condition could affect helicopters already in service and fire extinguisher bottles of the same part number in stock as spare parts. If not corrected, an improperly wired fire extinguishing bottle might cause the extinguishing agent to be discharged toward the unselected engine when the system is activated, rather than toward the engine

with the fire. This AD requires determining if each engine has the proper outlet end on the electrical receptacle/connector that attaches the firing cartridge to the fire extinguisher bottle, and if not, replacing the fire extinguisher bottle. This AD is intended to prevent the fire extinguishing agent from not discharging toward the engine with the fire, which could result in loss of the helicopter due to an engine fire.

DATES: This AD becomes effective on September 9, 2009.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of September 9, 2009.

ADDRESSES: You may examine the AD docket on the Internet at <http://regulations.gov> or in person at the Docket Operations office, U.S.

Department of Transportation, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331-229111, fax 39 0331-229605/222595, or at http://customersupport.agusta.com/technical_advice.php.

Examining The AD Docket: The AD docket contains the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647-5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: John Strasburger, Aviation Safety Engineer FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5167; fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to Agusta Model AB139 and AW139 helicopters on February 19, 2009. That NPRM was published in the **Federal Register** on March 9, 2009 (74 FR 9971). That NPRM proposed to require determining if each engine has the proper outlet end on the electrical receptacle/connector that attaches the firing cartridge to the fire extinguisher bottle, and if not, replacing the fire extinguisher bottle. The proposed AD

actions are intended to prevent the fire extinguishing agent from not discharging toward the engine with the fire, which could result in loss of the helicopter due to an engine fire. You may obtain further information by examining the MCAI and any related service information in the AD docket.

Comments

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

Relevant Service Information

Agusta has issued Bollettino Tecnico No. 139-085, dated May 18, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI AD

We have reviewed the MCAI AD and related service information and, in general, agree with their substance. However, our AD differs from the MCAI AD to clarify the unsafe condition and compliance instructions. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information. These differences are highlighted in the "Differences Between the FAA AD and the MCAI AD" section in the AD.

Costs of Compliance

We estimate that this AD will affect about 20 helicopters of U.S. registry and that it will take about 1 work-hour per helicopter to verify the correct installation of electrical receptacles/connectors on the two fire extinguisher bottles. We also estimate that it will take about 3 work-hours per helicopter to replace a fire extinguisher bottle with the inverted electrical receptacles/connectors and that about 5% (2 bottles) of the fire extinguisher bottles in the fleet will have to be replaced. The average labor rate is \$80 per work hour. The cost of a replacement fire extinguisher bottle is \$10,300. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$22,680.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

Therefore, I certify this AD:

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

Effective Date

2009-15-14 Agusta S.p.A.: Amendment 39-15977; Docket No. FAA-2009-0168; Directorate Identifier 2007-SW-33-AD.

(a) This airworthiness directive (AD) becomes effective on September 9, 2009.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AB139 helicopters, serial number (S/N) 31005 through 31054, except S/N 31007, and AW139 helicopters, S/N 31055 through 31067, S/N 31070, and S/N 31071, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that during the installation of a fire extinguisher bottle, part number 3G2620V00131, on a helicopter during manufacture, it was found that the electrical receptacle/connectors on the bottle which commands the firing of the extinguishing agent were swapped between engines No. 1 and No. 2. This condition could affect helicopters already in service and fire extinguisher bottles of the same part number in stock as spare parts. If not corrected, an improperly wired fire extinguishing bottle might cause the extinguishing agent to be discharged toward the unselected engine when the system is activated, rather than toward the engine with the fire. This AD requires determining if each engine has the proper outlet end on the electrical receptacle/connector that attaches the firing cartridge to the fire extinguisher bottle, and if not, replacing the fire extinguisher bottle. This AD is intended to prevent the fire extinguishing agent from not discharging toward the engine with the fire, which could result in loss of the helicopter due to an engine fire.

Actions and Compliance

(e) Within 100 hours time-in-service (TIS) or 3 months, whichever occurs first, unless already done, do the following actions.

(1) Determine whether the fire extinguishing bottle (bottle) for engines No. 1 and No. 2 have the proper outlet end on the electrical receptacle/connector, which attaches the firing cartridge to the bottle, by following steps 4. and 5. of the Compliance Instructions in Agusta Bollettino Tecnico No. 139-085, dated May 18, 2007 (BT).

(2) If a bottle has an electrical receptacle/connector for the firing cartridge with an improper outlet end, before further flight, replace the bottle with a bottle that has an electrical receptacle/connector with a proper outlet end in accordance with step 6. of the Compliance Instructions in the BT.

Differences Between This AD and the MCAI AD

(f) This AD uses the term "hours time-in-service" rather than "flight hours."

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: John Strasburger, Aviation Safety Engineer,

FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5167; fax (817) 222-5961, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) MCAI Ente Nazionale Per L'Aviazione Civile Airworthiness Directive No. 2007-227, dated June 18, 2007, contains related information.

Joint Aircraft System/Component (JASC) Code

(i) JASC Code 2621: Fire Bottle, Fixed.

Material Incorporated by Reference

(j) You must use the specified portions of Agusta Bollettino Tecnico No. 139-085, dated May 18, 2007 to do the actions required.

(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 Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331-229111, fax 39 0331-229605/222595, or at http://customersupport.agusta.com/technical_advice.php.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Fort Worth, Texas, on July 10, 2009.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9-18430 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-1213; Directorate Identifier 2007-NM-092-AD; Amendment 39-15987; AD 2009-16-14]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-100, -200, -200C, -300, -400, and -500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Boeing Model

737-100, -200, -200C, -300, -400, and -500 series airplanes. That AD currently requires repetitive inspections of the intercostal webs, attachment clips, and stringer splice channels for cracks; and corrective action if necessary. This new AD reduces the repetitive inspection intervals from 25,000 flight cycles to 6,000 flight cycles, and expands the inspection area for Model 737-200C series airplanes to include the area aft of the forward entry door. This AD results from additional reports of fatigue cracks. We are issuing this AD to detect and correct fatigue cracking of the intercostals on the forward and aft sides of the forward entry door, which could result in loss of the forward entry door and rapid decompression of the airplane.

DATES: This AD becomes effective September 9, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 9, 2009.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Alan Pohl, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6450; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005-20-03, amendment 39-14296 (70 FR 56361, September 27,

2005). The existing AD applies to certain Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. That NPRM was published in the **Federal Register** on November 17, 2008 (73 FR 67815). That NPRM proposed to continue to require repetitive inspections of the intercostal webs, attachment clips, and stringer splice channels for cracks, at repetitive inspection intervals reduced from 25,000 flight cycles to 6,000 flight cycles; and corrective action if necessary. That NPRM also proposed to expand the inspection area for Model 737-200C series airplanes to include the area aft of the forward entry door.

Comments

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

Request to Increase Grace Period

US Airways requests that we increase the threshold grace period from 3,000 flight cycles after the effective date of this AD to 4,500 flight cycles. US Airways states that the new grace period it requests would allow operators to schedule more airplanes into appropriate maintenance tasks. US Airways explains that the inspection would affect its operation by requiring additional maintenance that is not presently scheduled.

We do not agree with the commenter's request. In developing an appropriate compliance time for this AD, we considered not only the safety implications, but the manufacturer's recommendations, and the practical aspect of accomplishing the modification within an interval of time that corresponds to typical scheduled maintenance for affected operators. However, under the provisions of paragraph (m) of this AD, we may consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed this AD in this regard.

Explanation of Additional Changes to the AD

We have clarified paragraphs (h), (i), and (l) of this AD to include the full citation for the service information referenced in those paragraphs. We made this change to ensure that it is clear which service information operators must use for a specific action.

We have changed paragraph (j) of this AD to remove the reference to "Part 4 of the Work Instructions of Boeing

Special Attention Service Bulletin 737-53-1204, dated June 19, 2003,” because that service bulletin does not contain a Part 4. Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007, does include Part 4 to provide procedures related to inspections and corrective actions for the intercostal webs and attachment clips located aft of the forward entry door. Boeing Special Attention Service Bulletin 737-53-

1204, dated June 19, 2003, does not include any actions for this area of the airplane.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes

will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 3,132 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of areas forward of the aft entry door (required by AD 2005-20-03).	2	\$80	\$160 per inspection cycle.	876	\$140,160 per inspection cycle.
Inspection of areas aft of the forward entry door for Model 737-200C series airplanes (new action).	1	80	80 per inspection cycle.	19	1,520 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866;
- (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-14296 (70 FR 56361, September 27, 2005) and by adding the following new airworthiness directive (AD):

2009-16-14 Boeing: Amendment 39-15987. Docket No. FAA-2008-1213; Directorate Identifier 2007-NM-092-AD.

Effective Date

(a) This AD becomes effective September 9, 2009.

Affected ADs

(b) This AD supersedes AD 2005-20-03.

Applicability

(c) This AD applies to Model 737-100, -200, -200C, -300, -400, and -500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007.

Unsafe Condition

(d) This AD results from reports of fatigue cracks. We are issuing this AD to detect and correct fatigue cracking of the intercostals on the forward and aft sides of the forward entry door, which could result in loss of the forward entry door and rapid decompression of the airplane.

Compliance

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

Initial Compliance Time

(f) For all Model 737-100, -200, -200C, -300, -400, and -500 series airplanes: Before the accumulation of 15,000 total flight cycles, or within 4,500 flight cycles after November 1, 2005 (the effective date of AD 2005-20-03), whichever occurs later: Do the inspections required by paragraphs (h) and (i) of this AD.

(g) For all Model 737-200C series airplanes: Before the accumulation of 15,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later: Do the inspection required by paragraph (j) of this AD.

Initial Inspection for Passenger Configuration Airplanes

(h) For Group 1 passenger airplanes identified in Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007: Perform a detailed inspection for

cracking of the intercostal web, attachment clips, and stringer splice channels; and a high frequency eddy current inspection for cracking of the stringer splice channels located forward and aft of the forward entry door; and do all applicable corrective actions before further flight; in accordance with Parts 1 and 2 of the Work Instructions of Boeing Special Attention Service Bulletin 737-53-1204, dated June 19, 2003; or Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007. After the effective date of this AD, only Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007, may be used.

Initial Inspection for Cargo Configuration Airplanes (Forward of the Forward Entry Door)

(i) For Group 2 cargo airplanes identified in Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007: Perform a detailed inspection for cracking of the intercostal webs and attachment clips located forward of the forward entry door, and do all applicable corrective actions before further flight, in accordance with Part 3 of the Work Instructions of Boeing Special Attention Service Bulletin 737-53-1204, dated June 19, 2003; or Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007. After the effective date of this AD, only Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007, may be used.

Initial Inspection for Cargo Configuration Airplanes (Aft of the Forward Entry Door)

(j) For Group 2 cargo airplanes identified in Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007: Perform a detailed inspection for cracking of the intercostal webs and attachment clips located aft of the forward entry door, and do all applicable corrective actions before further flight, in accordance with Part 4 of the Work Instructions of Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007.

Repeat Inspections

(k) Repeat the inspections required by paragraphs (h), (i), and (j) of this AD thereafter at intervals not to exceed 6,000 flight cycles after the previous inspection, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

Exceptions

(l) Do the actions required by this AD by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-53-1204, dated June 19, 2003; or Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007; except as provided by paragraphs (l)(1) and (l)(2) of this AD. After the effective date of this AD, only Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007, may be used.

(1) Where Boeing Special Attention Service Bulletin 737-53-1204, dated June 19, 2003; or Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007; specifies to contact Boeing for repair instructions: Before further flight, repair

using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(2) Where Boeing Special Attention Service Bulletin 737-53-1204, dated June 19, 2003; or Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007; specifies a compliance time relative to the date of a service bulletin, this AD requires compliance relative to the effective date of this AD. Where Boeing Special Attention Service Bulletin 737-53-1204, dated June 19, 2003; or Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007; specifies a compliance time relative to the date of the initial release of the service bulletin, this AD requires compliance relative to the effective date of AD 2005-20-03 (November 1, 2005).

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6450; fax (425) 917-6590.

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

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

(4) AMOCs approved previously in accordance with AD 2005-20-03 are approved as AMOCs for the corresponding provisions of this AD, provided the repetitive inspection intervals (if any) do not exceed 6,000 flight cycles.

(5) AMOCs approved previously in accordance with AD 2005-20-03 are not approved as AMOCs for the provisions of paragraph (j) or (k) of this AD.

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737-53A1204, Revision 1, dated March 26, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

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

Issued in Renton, Washington, on July 23, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-18419 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-26234; Directorate Identifier 2006-CE-064-AD; Amendment 39-15983; AD 2007-03-17 R1

RIN 2120-AA64

Airworthiness Directives; SOCATA Model TBM 700 Airplanes

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

ACTION: Final rule.

SUMMARY: We are revising 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 describes the unsafe condition as:

This Airworthiness Directive (AD) was prompted by reports of loose rivets on frames C18 BIS and C19, which could result in a reduced structural integrity of the tail area.

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

DATES: This AD becomes effective September 9, 2009.

On September 9, 2009, the Director of the Federal Register approved the

incorporation by reference of SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, AMENDMENT 1, dated February 2009, listed in this AD.

As of March 15, 2007 (72 FR 5923, February 8, 2007), the Director of the Federal Register approved the incorporation by reference of SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, dated June 2005, 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: Albert Mercado, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; 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 12, 2009 (74 FR 22125), and proposed to revise AD 2007–03–17, Amendment 39–14928 (72 FR 5923, February 8, 2007).

Since we issued AD 2007–03–17, EADS SOCATA revised the service bulletin used in the AD to change the applicability.

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

This Airworthiness Directive (AD) was prompted by reports of loose rivets on frames C18 BIS and C19, which could result in a reduced structural integrity of the tail area.

This MCAI requires you to inspect the rivets on frames C18 BIS and C19, and, if necessary, apply corrective actions. 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 comment received.

Comment Issue: Required Work-Hours and Labor Cost

SOCATA comments that the initial inspection would take 0.5 work-hour. If necessary, rivets replacement would never take more than 5 work-hours. If parts are necessary, only rivets and shims are required, and their cost is negligible.

We agree with SOCATA, and we will revise the basic requirement work-hours estimate from 3 work-hours to 1 work-hour. We will also revise the follow-on work-hours from 15 hours to 5 hours and revise the follow-on parts cost from \$2,000 to \$5 per product per SOCATA's comments.

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 272 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$21,760, or \$80 per product.

In addition, we estimate that any necessary follow-on actions would take about 5 work-hours and require parts costing \$5 for a cost of \$405 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 AD 2007–03–17, Amendment 39–14928 (72 FR 5923, February 8, 2007) and adding the following new AD: **2007–03–17 R1 SOCATA:** Amendment 39–15983; Docket No. FAA–2006–26234; Directorate Identifier 2006–CE–064–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 9, 2009.

Affected ADs

(b) This AD revises AD 2007–03–17, Amendment 39–14928 (72 FR 5923, February 8, 2007).

Applicability

(c) This AD applies to TBM 700 airplanes, serial numbers 1 through 345, certificated in any category.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states: This Airworthiness Directive (AD) was prompted by reports of loose rivets on frames C18 BIS and C19, which could result in a reduced structural integrity of the tail area. This MCAI requires you to inspect the rivets on frames C18 BIS and C19, and, if necessary, apply corrective actions. You may obtain further information by examining the MCAI in the AD docket.

Actions and Compliance

(f) Unless already done, within the next 100 hours time-in-service (TIS) after September 9, 2009 (the effective date of this AD) or within the next 12 months after September 9, 2009 (the effective date of this AD), whichever occurs later, and repetitively thereafter at intervals not to exceed every 100 hours TIS, do a detailed inspection of the area and apply corrective actions, as necessary. Follow the accomplishment instructions of either SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, dated June 2005 or SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, AMENDMENT 1, dated February 2009.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: SOCATA revised the service bulletin used in AD 2007–03–17, Amendment 39–14928 (72 FR 5923, February 8, 2007). The revised service bulletin changes the applicability of the airplanes from what was in the original service bulletin. The MCAI has not been revised and allows the use of “Any subsequent approved revision of this

document is acceptable” for service bulletin revisions. The FAA AD does not have a similar provision. This revised AD changes the Applicability section based on the revised service bulletin.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Direction Générale de l'aviation Civile Airworthiness Directive No F–2005–132, dated August 3, 2005; SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, dated June 2005; and SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, AMENDMENT 1, dated February 2009 for related information.

Material Incorporated by Reference

(i) You must use SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, dated June 2005, or SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, AMENDMENT 1, dated February 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 SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, AMENDMENT 1, dated February 2009, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On March 15, 2007 (72 FR 5923, February 8, 2007), the Director of the Federal Register previously approved the incorporation by reference of SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, dated June 2005.

(3) For service information identified in this AD, contact SOCATA, 65921 Tarbes Cedex 9, France; Telephone: +33 (0) 5 62 41 73 00; Fax: +33 (0) 5 62 41 73 05; Internet: <http://www.socata.com>.

(4) 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.

(5) 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 16, 2009.

Wes Ryan,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–17897 Filed 8–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29173; Directorate Identifier 2006–NM–283–AD; Amendment 39–15989; AD 2009–16–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This AD requires installing an automatic shutoff system for the auxiliary fuel tank override/jettison fuel pumps (also referred to as center tank fuel pumps in the airplane flight manual (AFM)), revising the AFM to advise the flightcrew of certain operating restrictions for airplanes equipped with an automatic auxiliary fuel tank pump shutoff control, and, for certain airplanes, installing a placard to alert the flightcrew of certain fuel usage restrictions. This AD provides optional terminating actions for certain requirements. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent an overheat condition outside the center tank fuel pump explosion-resistance area that is open to the pump inlet, which could cause an ignition source for the fuel vapors in the fuel tank and result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective September 9, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 9, 2009.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of September 4, 2001 (66 FR 39417, July 31, 2001).

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6505; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all Boeing Model 767 airplanes. That NPRM was published in the **Federal**

Register on September 11, 2007 (72 FR 51725). That NPRM proposed to require installing an automatic shutoff system for the auxiliary fuel tank override/jettison pumps (referred to as center tank fuel pumps in the airplane flight manual (AFM)), revising the AFM to advise the flightcrew of certain operating restrictions for airplanes equipped with an automatic auxiliary fuel tank pump shutoff control, revising the Airworthiness Limitations Section (AWL) of certain maintenance documents to include new inspections of the automatic shutoff system for the auxiliary fuel tank override/jettison pumps, and, for certain airplanes, installing a placard to alert the flightcrew of certain fuel usage restrictions.

Actions Since NPRM was Issued

To avoid including redundant requirements in this AD, we have removed the proposed requirement to revise the AWL section of certain maintenance documents to include new inspections of the automatic shutoff system for the auxiliary fuel tank override/jettison pumps. This AWL revision is already required by AD 2008-11-01, amendment 39-15523 (73 FR 29414, May 21, 2008), for certain Boeing Model 767-200, -300, -300F, and -400ER series airplanes, with an original standard airworthiness certificate or original export certificate issued before April 22, 2006. Airplanes with a certificate issued on or after April 22, 2006, must already be compliant with the AWL revision because those limitations were applicable as part of the airworthiness certification of those airplanes. We have removed the AWL revision requirement from this AD (which was in paragraph (i) of the NPRM) and re-identified subsequent paragraphs.

We have combined the AFM text proposed in paragraphs (h)(1) and (h)(2) of the NPRM into one paragraph, paragraph (h), in this AD. Doing this moved the proposed revisions for the Normal Procedures section of the AFM

and placed them with the other proposed revisions for the Certificate Limitation section of the AFM. We determined that the Certification Limitation section is the more appropriate section in the AFM for all of the revisions because the revisions are intended to be airplane limitations. In the De-fueling and Fuel Transfer section of the AFM text, we revised the text to address all fuel pumps instead of only the center tank fuel pumps. The same concern (potential ignition source) for dry running during de-fueling exists for the main tank pumps. The limitation revisions required in this AD are similar to the limitations that have been placed on other Boeing airplane models in similar AD actions.

We have also revised the text in paragraph (m) of this AD (the Alternative Methods of Compliance (AMOC) paragraph) to include more contact information and further clarification on the AMOC process.

Boeing issued Revision 2, dated February 12, 2009, to Service Bulletin 767-28A0083. We have revised paragraph (f) of this AD to reference Revision 2 of the service bulletin and have revised paragraph (g) of this AD to provide credit for Boeing Service Bulletin 767-28A0083, Revision 1, dated April 26, 2007. Revision 2 of this service bulletin corrects the wiring configuration group for some airplanes, and adds and corrects some figures and references.

Comments

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

Request to Clarify Service Bulletin

TDG Aerospace (TDG) states that after reviewing the requirements in Section 25.981 of the Federal Aviation Regulations (14 CFR 25.981), it questions whether the service bulletins (listed in the following table) referenced in the NPRM are FAA approved.

TABLE—SERVICE BULLETINS REFERENCED IN THE NPRM

Boeing Alert Service Bulletin—	Revision—	Dated—
767-28A0083	1	April 26, 2007.
767-28A0083	Original	May 3, 2006.
767-28A0084	1	April 26, 2007.
767-28A0084	Original	May 3, 2006.

We have determined that the service information referenced in this AD meets applicable requirements and is FAA-approved. No change to this AD is necessary in this regard.

Request To Exclude Airplanes With Deactivated Center Fuel Tanks

All Nippon Airways (ANA) and ABX Air request that we exclude airplanes with deactivated center fuel tanks from the requirements of the NPRM. ANA suggests that we revise the applicability of the NPRM to exclude airplanes with deactivated center fuel tanks. ANA states that the center wing tank pumps of airplanes with deactivated center fuel tanks do not have power provided to the pumps and, therefore, do not pose a risk of ignition. ABX Air suggests that we add a paragraph stating that no action is required for airplanes with center fuel tanks deactivated in accordance with Boeing Alert Service Bulletin 767-28A0050, dated December 18, 1997; or Boeing Service Bulletin 767-28A0050, Revision 1, dated December 22, 1999. ABX Air also states that if pumps cannot operate, the identified unsafe condition is eliminated. ABX Air also states that paragraph (j) of the NPRM proposes to require placards and that requiring placards that refer to AD 2001-15-08, amendment 39-12342 (66 FR 39417, July 31, 2001) is inappropriate for airplanes with deactivated fuel tanks.

We partially agree. We agree that deactivated center tank pumps do not pose an ignition risk because there is no power provided to these pumps. But to ensure that power cannot be applied to the pumps, we must specifically require the method of deactivation. Boeing Alert Service Bulletin 767-28A0050, dated December 18, 1997; or Boeing Service Bulletin 767-28A0050, Revision 1, dated December 22, 1999; provide adequate procedures for deactivating the center fuel tanks. Deactivation of center tanks in accordance with these service bulletins is approved as an optional terminating action for the requirements of paragraphs (f), (h), and (i) of this AD, as indicated in new paragraph (j) of this AD. For airplanes with tanks deactivated in a different manner, operators must request approval of an AMOC, as specified in paragraph (m) of this AD, and provide data to substantiate that the deactivation methods will ensure the safety of the airplane. We have also added new paragraph (k) to this AD to address airplanes on which the center fuel tanks are reactivated.

In regard to the commenter's statement that requiring placards is inappropriate for airplanes with

deactivated fuel tanks, we agree that the fuel management placard specified in paragraph (i) of this AD is not necessary for airplanes with deactivated center fuel tanks. We have included this information in paragraphs (j) and (k) of this AD accordingly.

Request To Allow Operating Limitations as Terminating Action

UPS requests that we revise the NPRM to allow compliance with certain operating limitations specified in AD 2001-15-08 (shutting off the pumps below certain fuel weight limits) and AFM limitations specified in the NPRM as terminating action for paragraphs (f) and (i) of the NPRM (automatic shutoff system installation and fuel pump operation limitations). According to UPS:

The benefit of having the automatic shutoff system is achieved only if the flight crew fails to follow procedure. In this instance, the issue becomes a flight crew training issue which needs to be addressed in a different and more appropriate medium.

UPS also states that because AD 2001-15-08 limits operation of the center fuel tank to more than 1,000 pounds of fuel at all times, the fuel pump is submerged and there is no potential for an ignition source.

UPS asserts that, when the pumps remain submerged with 1,000 pounds of fuel, there is no opportunity for ignition sources to develop from the pump, and those conditions effectively provide a level of safety higher than that provided by installing the pump automatic shutoff as proposed in the NPRM.

We disagree. AD 2001-15-08 requires, among other things, revising the AFM to include procedures that will ensure that the center tank fuel pumps are always operated with useable fuel levels (1,000 pounds or more). However, that AD addressed a specific problem with the center tank fuel pumps that could lead to an ignition source in the fuel tank. Shutting off pumps with 1,000 pounds of fuel remaining is regarded only as interim action for that specific unsafe condition, until the pump power control system changes are incorporated. Even in the absence of specific fuel pump ignition source issues, the fuel pump indication features and crew procedures in the original design are now considered to need corrective action to eliminate the reliance on flight crew procedures to prevent extended dry pump operation. We are aware of numerous accounts of pilots failing to turn pumps off at the current requirement of 1,000 pounds. We have, therefore, determined that installing the automatic shutoff system provides a higher level of safety because

it prevents extended dry running of the fuel pumps. We have not changed this AD regarding this issue.

Request To Clarify Airplanes Affected by Certain Requirements

Boeing requests that we revise certain paragraphs of the NPRM to identify affected airplanes. According to Boeing, Model 767 airplanes beginning with line number 941 (VR088) have the center tank fuel pump automatic shutoff system installed in production and should be excluded from the retrofit requirements.

We agree, for the reason provided by Boeing. We have revised paragraphs (f) and (h) of this AD to clarify the airplanes affected by the requirements of those paragraphs.

Request To Include Means of Compliance for Universal Fault Interrupter (UFI)

TDG states that it is currently certifying its UFI for use on Model 767 airplanes. TDG claims that the UFI, already implemented on other Boeing airplanes, will provide (1) a center tank override pump automatic shutoff, (2) uncommanded run protection (from control relay failed in the "ON" position), and (3) electrical fault protection (line-to-ground, line-to-line, open phases, etc.). TDG, therefore, requests that we include the UFI as a means of compliance, if the supplemental type certificate (STC) for the Model 767 UFI is approved before the final rule is issued.

We disagree with the commenter's request. At this time, the TDG 767 STC has not yet been approved, so we cannot identify it as a method of compliance for this AD. However, we recognize that a similar TDG STC has been approved for Boeing Model 757 airplanes and that it was identified as a method of compliance for a similar AD related to that model. Once the 767 STC is issued, TDG may apply for approval of an AMOC for the design, as provided by paragraph (m) of this AD.

Request To Match AFM and NPRM Language

Japan Airlines (JAL) advises of a discrepancy between the wording in the corresponding portions of Boeing's current AFM and the original NPRM. Paragraph (h)(2) of the NPRM states that center tank fuel "pumps" must not be on, but the latest revision to the AFM states that center tank fuel "pump switches" must not be on.

We agree. The current AFM (correctly) contains the word "switches." As the commenter points out, the wording should be consistent in

both the AFM and this document. We have revised paragraph (h) of this AD accordingly.

Request To Revise Description of Affected Pumps

Boeing requests that we revise the Summary and Relevant Service Information sections of the NPRM. Specifically, reference to the “auxiliary fuel tank boost pump” should be changed to the “override/jettison fuel pump” as the appropriate fuel pump in the auxiliary tank. Boeing adds that references to fuel “boost pumps” are typically associated with fuel pumps located in the main tanks, so referring to auxiliary fuel pumps as “boost pumps” could be confusing.

We agree that the wording identified by the commenter could be confusing. We have revised the Summary section and other relevant sections in this AD as requested. The Relevant Service Information section, however, is not repeated in this final rule. We have also revised references to auxiliary tank pumps to “center tank fuel pumps” throughout the rest of this AD for clarity and consistency with the AFM text.

Request to Correct Paragraph Reference

JAL points out that Note 2 of the NPRM refers to paragraph (g) of the AD, but should refer to paragraph (h). We agree and have revised Note 1 in this AD (which was Note 2 in the NPRM) accordingly.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 414 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The fleet cost could be as high as \$4,655,016.

ESTIMATED COSTS

Affected airplanes	Affected airplane groups	Work hours	Average hourly labor rate	Cost of parts	Cost per airplane
767-200, 767-300, 767-300F	1-39	29	\$80	\$ 8,924	\$ 11,244
	40-79	25	80	8,495	10,495
	80-81	3	80	420	660
767-400ER	All	23	80	7,911	9,751

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:
Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:
2009-16-06 Boeing: Amendment 39-15989. Docket No. FAA-2007-29173; Directorate Identifier 2006-NM-283-AD.

Effective Date

(a) This airworthiness directive (AD) is effective September 9, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 767-200, -300, -300F, and -400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent an overheat condition outside the center tank fuel pump explosion-resistance area that is open to the pump inlet, which could cause an ignition source for the fuel vapors in the fuel tank and result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Installation

(f) For Model 767 airplanes with line numbers 1 through 940 inclusive: Within 36 months after the effective date of this AD, install an automatic shutoff system for the center tank fuel pump, in accordance with Boeing Service Bulletin 767-28A0083, Revision 2, dated February 12, 2009 (for Model 767-200, -300, and -300F airplanes); or Boeing Service Bulletin 767-28A0084, Revision 1, dated April 26, 2007 (for Model 767-400ER airplanes); as applicable.

Installation According to Previous Issue of Service Bulletin

(g) Installing an automatic shutoff system is also acceptable for compliance with the

requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with service information identified in Table 1 of this AD.

TABLE 1—PREVIOUS ISSUES OF SERVICE BULLETINS

Boeing service information	Revision level	Date
Alert Service Bulletin 767–28A0083	Original	May 3, 2006.
Alert Service Bulletin 767–28A0084	Original	May 3, 2006.
Service Bulletin 767–28A0083	1	April 26, 2007.

Revision of Airplane Flight Manual (AFM)

(h) For Model 767 airplanes with line numbers 1 through 940 inclusive: Concurrently with accomplishing the actions required by paragraph (f) of this AD, revise Section 1, Certificate Limitations, of the Boeing 767 AFM to include the following: “CENTER TANK FUEL PUMPS

Center tank fuel pump switches must not be “ON” unless personnel are available in the flight deck to monitor low PRESS lights.

For ground operations prior to engine start: The center tank fuel pump switches must not be positioned ON unless the center tank contains usable fuel. With center tank fuel pump switches ON, verify both center tank fuel pump low PRESS lights are illuminated and EICAS CTR L FUEL PUMP and CTR R FUEL PUMP messages are displayed.

For ground operations after engine start and flight operations: The center tank fuel pump switch must be selected OFF when the respective CTR L FUEL PUMP or CTR R FUEL PUMP message displays. Both center tank fuel pump switches must be selected OFF when either the CTR L FUEL PUMP or CTR R FUEL PUMP message displays if the center tank is empty. During cruise flight, both center tank pump switches may be reselected ON whenever center tank usable fuel is indicated.

DE-FUELING AND FUEL TRANSFER

When transferring fuel or de-fueling center or main wing tanks, the fuel pump low PRESS lights must be monitored and the respective fuel pump switches positioned to “OFF” at the first indication of low pressure. Prior to transferring fuel or de-fueling, conduct a lamp test of the respective fuel pump low PRESS lights.

Intentional dry running of a center tank fuel pump (CTR L FUEL PUMP or CTR R FUEL PUMP message displayed on EICAS) is prohibited.

Do not reset a tripped fuel pump or fuel pump control circuit breaker.”

This may be done by inserting a copy of this AD into the AFM.

Note 1: When statements identical to those in paragraph (h) of this AD have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Placard Installation

(i) For Model 767–200, –300, or –300F airplanes that meet the conditions of paragraphs (i)(1) and (i)(2) of this AD: Within 30 days after the effective date of this AD, install a placard in the flight deck adjacent

to each pilot’s primary flight display, to alert the flightcrew to follow the procedures required by paragraph (b) of AD 2001–15–08. The placard must include the following statement: “AD 2001–15–08 fuel usage restrictions required.” Alternative placard wording may be used if approved by an appropriate FAA Principal Operations Inspector. Alternative placard methods and alternative methods of mixed fleet configuration control may be used if submitted for review in accordance with the procedures specified in paragraph (m) of this AD.

(1) The airplane is operated in a fleet of airplanes on which the actions specified in paragraph (f) of this AD have been done on at least one of the fleet’s airplanes.

(2) The actions specified in paragraph (i) of AD 2001–15–08 (installation of modified center tank override and override/jettison fuel pumps that are not subject to the unsafe condition described in this AD) or paragraph (f) of this AD have not been done on the airplane.

Note 2: If the actions specified in paragraph (f) of this AD have been done on all airplanes operated within an operator’s fleet, or if operation according to the fuel usage restrictions of AD 2001–15–08 is maintained until automatic shutoff systems are installed on all airplanes in an operator’s fleet: No placard is necessary before removal of the wet shutoff restrictions of AD 2001–15–08.

Optional Terminating Action for Paragraphs (f), (h), and (i) of this AD: Deactivation of Center Fuel Tanks

(j) Deactivation of the center fuel tanks, in accordance with Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997; or Boeing Service Bulletin 767–28A0050, Revision 1, dated December 22, 1999; terminates the requirements of paragraphs (f), (h), and (i) of this AD, except as provided by paragraph (k) of this AD.

Reactivation of Center Fuel Tanks

(k) For any airplane on which the center fuel tank is reactivated, the center fuel tank must be reactivated in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For any airplane on which the center fuel tank is reactivated, the requirements of paragraphs (f), (h), and (i) of this AD must be done before further flight following the reactivation, or within 36 months after the effective date of this AD, whichever occurs later. For a reactivation method to be approved, the

reactivation method must meet the certification basis of the airplane, and the approval must specifically reference this AD.

Terminating Action for AD 2001–15–08

(l) For airplanes that have automatic shutoff systems installed: Accomplishing paragraphs (f) and (i) of this AD terminates the requirements of paragraphs (b) and (c) of AD 2001–15–08.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle 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: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590. Or, e-mail information to 9–ANM–Seattle-ACO–AMOC–Requests@faa.gov.

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

Material Incorporated by Reference

(n) You must use Boeing Service Bulletin 767–28A0083, Revision 2, dated February 12, 2009; or Boeing Service Bulletin 767–28A0084, Revision 1, dated April 26, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional terminating action specified by this AD, you must use Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997; or Boeing Service Bulletin 767–28A0050, Revision 1, dated December 22, 1999; to perform those actions, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 767–28A0083, Revision 2, dated February 12, 2009; and Boeing Service Bulletin 767–28A0084, Revision 1, dated April 26, 2007; under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997; and Boeing Service Bulletin 767–28A0050,

Revision 1, dated December 22, 1999; on September 4, 2001 (66 FR 39417, July 31, 2001).

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

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

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

Issued in Renton, Washington, on July 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-18423 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0691; Directorate Identifier 2009-NM-061-AD; Amendment 39-15988; AD 2009-16-05]

RIN 2120-AA64

Airworthiness Directives; Fokker Model F.27 Mark 050 Airplanes

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

ACTION: Final rule; request for comments.

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

During the walk around check on a Fokker 50 (F27 Mark 050) aeroplane, extensive damage was found on the left hand (LH) inner flap and nacelle. The damage had been caused by a broken fork of the inner flap outboard drive shaft. This resulted in asymmetric flap extension and interference

between the flap and the nacelle. A metallurgical investigation showed that the fork end failed in a fatigue mode. Most probably the failure was caused by the "cyclic load" as a result of regularly reaching the mechanical end stop position.

* * * * *

This condition, if not corrected, could lead to further cases of asymmetric flap extension, possibly resulting in loss of control of the aeroplane.

* * * * *

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

DATES: This AD becomes effective August 20, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 20, 2009.

We must receive comments on this AD by September 4, 2009.

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

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

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

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

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European

Community, has issued EASA Airworthiness Directive 2009-0047, dated March 2, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During the walk around check on a Fokker 50 (F27 Mark 050) aeroplane, extensive damage was found on the left hand (LH) inner flap and nacelle. The damage had been caused by a broken fork of the inner flap outboard drive shaft. This resulted in asymmetric flap extension and interference between the flap and the nacelle. A metallurgical investigation showed that the fork end failed in a fatigue mode. Most probably the failure was caused by the "cyclic load" as a result of regularly reaching the mechanical end stop position.

A review of the Aircraft Maintenance Manual (AMM) 'end stop clearances check' for aeroplane in post-SBF50-27-030 configuration, revealed that this inspection procedure, to determine and correct the clearance between the end stop and the flap drive nut, may need some improvement, which is now being considered. Further investigation showed that this type of failure has occurred previously on other Fokker 50 aeroplanes, but only those modified in accordance with SBF50-27-030. A review of the experience with pre-mod SBF50-27-030 aeroplane indicated that no failures have been reported.

This condition, if not corrected, could lead to further cases of asymmetric flap extension, possibly resulting in loss of control of the aeroplane.

For the reasons described above, this EASA AD requires a one-time inspection of the clearance between the flap mechanical drive nut and the up and down stop and a non-destructive inspection of certain components, if abutments marks are present or when the up and/or down stop touches the drive nut after a full up or down selection in the hydraulic mode.

Based on the above described failure scenario, the differences in the design properties and the positive experience, aeroplanes in pre-SBF50-27-030 configuration are not affected by this AD.

Corrective actions include readjusting the up-stop position if clearance between the flap mechanical drive nut and the up-and-down-stop is incorrect, and if any cracks are found during the non-destructive inspection, replacing the part with a serviceable part. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker has issued Service Bulletin SBF50-27-043, dated November 17, 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 AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0691; Directorate Identifier 2009-NM-061-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009-16-05 Fokker Services B.V.:

Amendment 39-15988. Docket No. FAA-2009-0691; Directorate Identifier 2009-NM-061-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 20, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.27 Mark 050 airplanes, certificated in any category, all serial numbers, if in a post Fokker Service Bulletin SBF50-27-030 configuration.

Subject

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

Reason

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

During the walk around check on a Fokker 50 (F27 Mark 050) aeroplane, extensive damage was found on the left hand (LH) inner flap and nacelle. The damage had been caused by a broken fork of the inner flap outboard drive shaft. This resulted in asymmetric flap extension and interference between the flap and the nacelle. A metallurgical investigation showed that the fork end failed in a fatigue mode. Most probably the failure was caused by the "cyclic load" as a result of regularly reaching the mechanical end stop position.

A review of the Aircraft Maintenance Manual (AMM) 'end stop clearances check' for aeroplane in post-SBF50-27-030 configuration, revealed that this inspection procedure, to determine and correct the clearance between the end stop and the flap drive nut, may need some improvement, which is now being considered. Further investigation showed that this type of failure has occurred previously on other Fokker 50 aeroplanes, but only those modified in accordance with SBF50-27-030. A review of the experience with pre-mod SBF50-27-030 aeroplane indicated that no failures have been reported.

This condition, if not corrected, could lead to further cases of asymmetric flap extension, possibly resulting in loss of control of the aeroplane.

For the reasons described above, this EASA AD requires a one-time inspection of the clearance between the flap mechanical drive nut and the up and down stop and a non destructive inspection of certain components, if abutments marks are present or when the up and/or down stop touches the drive nut

after a full up or down selection in the hydraulic mode.

Based on the above described failure scenario, the differences in the design properties and the positive experience, aeroplanes in pre-SBF50-27-030 configuration are not affected by this AD.

Corrective actions include readjusting the up-stop position if clearance between the flap mechanical drive nut and the up-and-down-stop is incorrect, and if any cracks are found during the non-destructive inspection, replacing the part with a serviceable part.

Actions and Compliance

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

(1) Within 12 months after the effective date of this AD, inspect the clearance between the flap mechanical drive nut and the up-and-down-stop, and before further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50-27-043, dated November 17, 2008.

(2) If, during accomplishment of the actions required by paragraph (f)(1) of this AD, abutments marks are found, or when the up-and-down-stop touches the drive nut after a full up or down selection in the hydraulic mode, before further flight, do a non-destructive inspection for cracking, in accordance with Fokker Service Bulletin SBF50-27-043, dated November 17, 2008. If any cracking is found, before further flight, replace the part with a serviceable part.

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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-1137; fax (425) 227-1149. 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 Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2009-0047, dated March 2, 2009; Fokker Service Bulletin SBF50-27-043, dated November 17, 2008; for related information.

Material Incorporated by Reference

(i) You must use Fokker Service Bulletin SBF50-27-043, dated November 17, 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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252-627-350; fax +31 (0)252-627-211; e-mail technicalservices.fokkerservices@stork.com; Internet <http://www.myfokkerfleet.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 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-18417 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0463; Directorate Identifier 2008-NM-065-AD; Amendment 39-15984; AD 2009-16-01]

RIN 2120-AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 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:

A failure mode has been identified that can lead to loss of a nose wheel. Any combination of excessive wear and/or adverse tolerances on the axle inner cone, outer cone or wheel hub splined sleeve cones can result in the loss of the critical gap between the inner flange face of the wheel outer cone and the axle end face. If this gap is lost, it can result in the wheel having free play along the length of the axle. This condition, if not corrected, can result in breakage of the wheel nut lock plate leading to unscrewing of the wheel retention nut and subsequent separation of the nose wheel from the landing gear axle.

* * * * *

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

DATES: This AD becomes effective September 9, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 9, 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: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

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 20, 2009 (74 FR 23671). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A failure mode has been identified that can lead to loss of a nose wheel. Any combination of excessive wear and/or adverse tolerances on the axle inner cone, outer cone or wheel hub splined sleeve cones

can result in the loss of the critical gap between the inner flange face of the wheel outer cone and the axle end face. If this gap is lost, it can result in the wheel having free play along the length of the axle. This condition, if not corrected, can result in breakage of the wheel nut lock plate leading to unscrewing of the wheel retention nut and subsequent separation of the nose wheel from the landing gear axle.

For the reasons described above, this AD requires repetitive inspections of the nose landing gear to ensure that the wheels are correctly retained and, depending on findings, replacement of worn parts.

Required actions include inspecting the lock plate for damage (including excessive wear) and cracking, and replacing the lock plate with a new or serviceable part if any damage or cracking is found; inspecting the wheel nut for damage, and replacing any damaged nut with a new or serviceable part; and measuring the gap between the inner flange of the outer cone (at each of the three sections) and the end face of the axle to determine if parts are worn, and replacing worn parts with new or serviceable parts. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also 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 \$2,240, 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 adding the following new AD:

2009-16-01 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39-15984. Docket No. FAA-2009-0463; Directorate Identifier 2008-NM-065-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 9, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model Jetstream 4101 airplanes, certificated in any category, all models, all serial numbers.

Subject

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

Reason

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

A failure mode has been identified that can lead to loss of a nose wheel. Any combination of excessive wear and/or adverse tolerances on the axle inner cone, outer cone or wheel hub splined sleeve cones can result in the loss of the critical gap between the inner flange face of the wheel outer cone and the axle end face. If this gap is lost, it can result in the wheel having free play along the length of the axle. This condition, if not corrected, can result in breakage of the wheel nut lock plate leading to unscrewing of the wheel retention nut and subsequent separation of the nose wheel from the landing gear axle.

For the reasons described above, this AD requires repetitive inspections of the nose landing gear to ensure that the wheels are correctly retained and, depending on findings, replacement of worn parts. Required actions include inspecting the lock plate for damage (including excessive wear) and cracking, and replacing the lock plate with a new or serviceable part if any damage or cracking is found; inspecting the wheel

nut for damage, and replacing any damaged nut with a new or serviceable part; and measuring the gap between the inner flange of the outer cone (at each of the three sections) and the end face of the axle to determine if parts are worn, and replacing worn parts with new or serviceable parts.

Actions and Compliance

(f) Unless already done, do the following actions for the left and right nose wheel attachments to the axle.

(1) Within 3 months after the effective date of this AD, inspect the lock plate for damage (including excessive wear) and cracking, inspect the wheel nut for damage, and measure the gap between the inner flange of the outer cone and the end face of the axle to determine if parts are worn, in accordance with paragraph 2.B. of BAE Systems (Operations) Limited Service Bulletin J41-32-086, dated June 27, 2007.

(2) If, during any inspection required by paragraph (f)(1) of this AD, any damage or cracking of the lock plate is found, before further flight, replace the lock plate with a new or serviceable part, in accordance with paragraph 2.B. of BAE Systems (Operations) Limited Service Bulletin J41-32-086, dated June 27, 2007.

(3) If, during any inspection required by paragraph (f)(1) of this AD, any damage of the wheel nut is found, before further flight, replace the wheel nut with a new or serviceable part, in accordance with paragraph 2.B. of BAE Systems (Operations) Limited Service Bulletin J41-32-086, dated June 27, 2007.

(4) If, during any measurement required by paragraph (f)(1) of this AD, the measured gap size is found to be less than 0.002 inch (0.05 mm), before further flight, replace any worn parts with new or serviceable parts, in accordance with paragraph 2.B. of BAE Systems (Operations) Limited Service Bulletin J41-32-086, dated June 27, 2007. Within 3,000 flight hours after doing the replacement, repeat the actions for the left and right nose wheel attachments to the axle that are required by paragraph (f)(1) of this AD.

(5) If, during any measurement required by paragraph (f)(1) of this AD, the measured gap size is equal to or more than 0.002 inch (0.05 mm), repeat the actions for the left and right nose wheel attachments to the axle that are required by paragraph (f)(1) of this AD thereafter at intervals not to exceed the value indicated in Table 1 of this AD, depending on the exact finding. If, during any repeat inspection, the finding has changed to another value (see Table 1), adjust the new interval accordingly.

TABLE 1—REPEAT INSPECTION INTERVALS—Continued

Measured gap size	Repeat inspection interval in flight hours
Greater than 0.010 inch to less than or equal to 0.020 inch (0.25/0.51mm)	2,000
Greater than 0.020 inch (0.51mm)	3,000

Note 1: Replacement of parts does not constitute terminating action for the inspection requirements of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although BAE Systems (Operations) Limited Service Bulletin J41-32-086, dated June 27, 2007, does not specify an inspection following the replacement of the left and right nose wheel attachment to the axle for measurements less than 0.002 inch, paragraph (f)(4) of this AD requires an inspection within 3,000 flight hours after replacing the part.

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: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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 2008-0036, dated February 22, 2008; and BAE Systems (Operations) Limited Service Bulletin J41-32-086, dated June 27, 2007; for related information.

Material Incorporated by Reference

(i) You must use BAE Systems (Operations) Limited Service Bulletin J41-32-086, dated June 27, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact BAE Systems Regional Aircraft, 13850 McLearn Road, Herndon, Virginia 20171; telephone 703-736-1080; e-mail raebusiness@baesystems.com; Internet <http://www.baesystems.com/Businesses/RegionalAircraft/index.htm>.

(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 22, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-18018 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number: 090422707-9708-01]

RIN 0607-AA48

Foreign Trade Regulations (FTR): Eliminate the Social Security Number (SSN) as an Identification Number in the Automated Export System (AES)

AGENCY: Bureau of the Census, Commerce Department.

ACTION: Interim final rule with request for comments.

SUMMARY: The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Regulations (FTR) to eliminate the requirement to report a Social Security Number (SSN) as an identification number when registering to file and filing electronic export information in the Automated Export System (AES) or *AESDirect*. Under the current regulations, the U.S. Principal Party in Interest (USPPI) or U.S. authorized agent residing or having an

TABLE 1—REPEAT INSPECTION INTERVALS

Measured gap size	Repeat inspection interval in flight hours
0.002 inch to 0.005 inch inclusive (0.05/0.13mm)	500
Greater than 0.005 inch to less than or equal to 0.010 inch (0.13/0.25mm)	1,000

office located in the United States is required to enter an Employer Identification Number (EIN), SSN, or Dun and Bradstreet Number (DUNS) when reporting export transactions in the AES or *AESDirect*. An SSN is used as an identification number principally by filers who are individuals. DUNS are available only to business entities, and EINs are available to both businesses and individuals.

Upon implementation of this Interim Final Rule, if the USPPPI or the U.S. authorized agent who resides or has an office located in the United States does not have an EIN, the USPPPI, or U.S. authorized agent must obtain an EIN through the Internal Revenue Service's Web site. Former SSN filers who want to use a DUNS rather than an EIN for identification purposes, must first obtain an EIN from the IRS and apply to Dun & Bradstreet for a DUNS. This rule is being implemented to ensure that a USPPPI's or U.S. authorized agent's SSN is protected in accordance with the Privacy Act of 1974, Title 5, United States Code, Section 552a.

DATES: *Effective Date:* This rule is effective September 4, 2009.

Implementation Date: The Census Bureau will implement provisions of this rule December 3, 2009.

Comment Due Date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 5, 2009 to be considered in the formation of the final rule.

ADDRESSES: You may submit your comments to: William G. Bostic, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, 4600 Silver Hill Road, Room 6K032, Washington, DC 20233-6700; by telephone at (301) 763-2255; by fax at (301) 763-6638; or by e-mail: william.g.bostic.jr@census.gov.

FOR FURTHER INFORMATION CONTACT: William G. Bostic, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, 4600 Silver Hill Road, Room 6K032, Washington, DC 20233-6700; by telephone at (301) 763-2255; by fax at (301) 763-6638; or by e-mail: william.g.bostic.jr@census.gov.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing export and import trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301(a). To implement this responsibility, the Census Bureau developed the Automated Export

System¹ (AES), an electronic filing system, to allow exporters to submit certain information directly with U.S. Customs Border and Protection (CBP) and the Census Bureau. The AES is also used for export control purposes to detect and prevent the export of certain items by unauthorized parties, destinations or end users. Under the FTR, 15 CFR 30.60(e), this information is exempt from public disclosure unless the Secretary of Commerce or his designee, the Director of the Census Bureau, determines that withholding such information would be contrary to the national interest under the provisions of Title 13, U.S.C., Chapter 9, Section 301(g).

Through the AES, the Census Bureau collects Electronic Export Information (EEI), the electronic equivalent of the export data formerly collected on the Shipper's Export Declaration. EEI consists of data elements for an export shipment, and includes information such as the exporter's personal identifying information, which includes name, address and identification number, and detailed information concerning the exported product.

Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and guidance from the Office of Management and Budget (OMB), the Census Bureau is amending its regulations to discontinue the collection of the Social Security Number when reporting EEI through the AES or other authorized method. Upon implementation of this rule, the AES will no longer provide the option for using the Social Security Number as an identification number. All USPPPIs and U.S. authorized agents who currently report a SSN when filing in the AES, because they do not have or use an EIN or DUNS number, must provide an EIN or DUNS number for identification purposes. EINs are available to both businesses and individuals and can be obtained by registering with the Internal Revenue Service (IRS) at <http://www.irs.gov> or by calling (800) 829-4933 and following the instructions. A DUNS number is available only to business entities with EINs and is available for a fee at Dun and Bradstreet's Web site at <http://www.dnb.com/us/>.

Regulatory Changes

To ensure the confidentiality of the USPPPI's and the U.S. authorized agent's personal information and to comply with the Privacy Act of 1974 and OMB guidance, the Census Bureau is

amending relevant sections of the Foreign Trade Regulations (FTR) to specify the requirements for the reporting of an EIN, or DUNS in place of a Social Security Number for identification purposes in the AES.

The Census Bureau is amending the following sections of the FTR:

- Section 30.1(c) definition for Party ID type is revised to eliminate the SSN.
- Sections 30.3(a) and 30.3(e) are revised to eliminate the requirement of reporting the SSN in the AES.
- Sections 30.6(a) and 30.6(b) are revised to eliminate the SSN as an option for the USPPPI and U.S.

authorized agent identification number. The U.S. Department of State and U.S. Department of Homeland Security concur with the provisions contained in this Final Rule.

Rulemaking Requirements

Administrative Procedure Act

The Census Bureau finds good cause pursuant to Title 5, United States Code, (U.S.C.), 553(b)(B) to waive prior notice and opportunity for public comment as it is impracticable and contrary to the public interest. To ensure the confidentiality of the USPPPI and the U.S. authorized agent's personal information and to comply with the Privacy Act of 1974, Title 5, U.S.C., Section 552a, the Census Bureau is amending appropriate sections of the Foreign Trade Regulations (FTR) to eliminate the reporting of the Social Security Number (SSN) by USPPPIs and U.S. authorized agents. If this rule were delayed to allow for notice and opportunity for public comment, USPPPIs and U.S. authorized agents would continue to be required to submit their SSN to the Census Bureau if they do not have an EIN or DUNS. Therefore, in order to maintain the security of personal information, and to comply with the Privacy Act of 1974, Title 5, U.S.C., Section 552a, the Census Bureau has determined that it will make this rule effective on September 4, 2009.

Regulatory Flexibility Act

Since notice and opportunity for comment are not required pursuant to Title 5, U.S.C., Section 553, or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable. Therefore, a final regulatory flexibility analysis is not required and one has not been prepared.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies

¹ References to AES include the *AESDirect*, a free online version of the AES.

with Federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule amends a collection of information subject to the requirements of the PRA, Title 44, U.S.C., Chapter 35, which has been approved under OMB control number 0607-0152. The reporting and recordkeeping burden for this requirement is estimated at three total burden minutes per AES filing. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a current, valid OMB control number.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and Recordkeeping requirements.

■ For the reasons set out in the preamble, Title 15, CFR part 30, is amended as follows:

PART 30—FOREIGN TRADE REGULATIONS

Subpart A—General Requirements

■ 1. The authority citation for Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301-307; Reorganization Plan 5 of 1990 (3 CFR 1949-1953 Comp., p.1004); Department of Commerce Organization Order No. 35-2A, July 22, 1987, as amended, and No. 35-2B, December 20, 1996, as amended; and Public Law 107-228, 116 Stat.1350.

■ 2. In § 30.1 (c), revise the definition "Party ID type" to read as follows:

§ 30.1 Purpose and definitions.

* * * * *

(c) * * *

Party ID type. Identifies whether the Party ID is an EIN, DUNS, or Foreign Entity reported to the AES, for example, E=EIN, D=DUNS, T=Foreign Entity.

* * * * *

■ 3. In § 30.3, revise paragraphs (a), (e)(1)(ii), and (e)(2)(vi) to read as follows:

§ 30.3 Electronic Export Information filer requirements, parties to export transactions, and responsibilities of parties to export transactions.

(a) General requirements. The filer of EEI for export transactions is either the

USPPI, or the U.S. authorized agent. All EEI submitted to the AES shall be complete, correct, and based on personal knowledge of the facts stated or on information furnished by the parties to the export transaction. The filer shall be physically located in the United States at the time of filing, have an EIN or DUNS and be certified to report in the AES. In the event that the filer does not have an EIN or DUNS, the filer must obtain an EIN from the Internal Revenue Service. The filer is responsible for the truth, accuracy, and completeness of the EEI, except insofar as that party can demonstrate that it reasonably relied on information furnished by other responsible persons participating in the transaction. All parties involved in export transactions, including U.S. authorized agents, should be aware that invoices and other commercial documents may not necessarily contain all the information needed to prepare the EEI. The parties shall ensure that all information needed for reporting to the AES, including correct export licensing information, is provided to the U.S. authorized agent for the purpose of correctly preparing the EEI.

* * * * *

(e) * * *

(1) * * *

(ii) USPPI's EIN or DUNS

* * * * *

(2) * * *

(vi) EIN or DUNS of the authorized agent.

* * * * *

■ 4. In § 30.6, revise paragraphs (a)(1)(iii) and (b)(1)(i) to read as follows:

§ 30.6 Electronic Export Information data elements.

* * * * *

(a) * * *

(1) * * *

(iii) USPPI identification number. The USPPI shall report its own IRS EIN in the USPPI field of the EEI. If the USPPI has only one EIN, report that EIN. If the USPPI has more than one EIN, report the EIN that the USPPI uses to report employee wages and withholdings, and not the EIN that is used to report only company earnings or receipts. If the USPPI does not have an EIN, the USPPI must obtain an EIN for reporting to the AES. Use of another company's or individual's EIN or other identification number is prohibited. The appropriate Party type code shall be reported through the AES. When a foreign entity is in the United States when the items are purchased or obtained for export, the foreign entity is the USPPI for filing purposes. In such situations, the foreign

entity shall report a DUNS, border crossing number, passport number, or any number assigned by CBP.

* * * * *

(b) * * *

(1) * * *

(i) U.S. Authorized agent's identification number. Report the U.S. authorized agent's own EIN or DUNS for the first shipment and for each subsequent shipment. Use of another company's or individual's EIN or other identification number is prohibited. The party ID type of agent identification (E=EIN, D=DUNS) shall be indicated.

* * * * *

Dated: July 30, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9-18728 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0269]

RIN 1625-AA00

Safety Zone; Sea World Labor Day Fireworks, Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Mission Bay in support of the Sea World Labor Day Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8 p.m. to 10 p.m., each day, from September 5, 2009 through September 7, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0269 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-2009-0269 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 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; and at Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101-1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278-7262, e-mail Shane.E.Jackson@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 action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the fireworks launching point and delay would be contrary to the public interest.

Background and Purpose

Sea World is sponsoring the Sea World Labor Day Fireworks, which will include a fireworks presentation launched from a barge in Mission Bay. The safety zone will extend in a 600 foot radius around the barge at an approximate position of 32°46'03" N, 117°13'11" W. This temporary safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8 p.m. to 10 p.m., each day, on September 5, 2009 through September 7, 2009. The safety zone will extend in a 600 foot radius around the barge at an

approximate position of 32°46'03" N, 117°13'11" W. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

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 proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the location, small size, and short duration of the safety zone, and the fact that vessel traffic will be able to pass safely around the zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

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 and operators of vessels intending to transit or anchor in that portion of Mission Bay covered by the zone. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can

pass safely around the safety zone, which is small and will be effective for a short period. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public 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 5100.1 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 it creates a safety zone. 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 temporary § 165.T11–190 to read as follows:

§ 165.T11–190 Safety Zone; Sea World Labor Day Fireworks, Mission Bay, San Diego, California.

(a) *Location.* The following area is a safety zone: All waters of Mission Bay, from surface to bottom, within 600 feet of the barge at an approximate position of 32°46'03" N, 117°13'11" W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 10 p.m., each day, on September 5, 2009 through September 7, 2009. If the event

concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative*, means any commissioned, warrant, or petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: July 6, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–18629 Filed 8–4–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0685]

RIN 1625–AA00

Safety Zone: USCG Barque Eagle Transits of Rockland Harbor, ME, Portland Harbor, ME and Portsmouth Harbor, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone excluding all vessels within a 100 yard radius of the U.S. Coast Guard Barque EAGLE during the vessel's transit in Rockland Harbor, Penobscot Bay, Casco Bay and Portland Harbor in

Maine as well as during its transit of Portsmouth Harbor, NH. This safety zone is needed to protect spectators, event safety vessels and others in the maritime community from the safety hazards created by sailing a large vessel in close proximity to smaller vessels. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Sector Northern New England or his designated representative.

DATES: This rule is effective from 8 a.m. on July 24, 2009 until 6 p.m. on August 10, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0685 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-2009-0685 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 Chief Petty Officer Randy Bucklin, U.S. Coast Guard Sector Northern New England, Waterways Management Division, telephone (207) 741-5440; e-mail randy.bucklin@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 for the moving safety zone 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 details regarding USCG Barque EAGLE's sail through the various harbors in Maine and in Portsmouth New Hampshire were not available in

time to give the public notice and an opportunity to comment thus making issuance of an NPRM impractical. Further, a cancellation or delay of the EAGLE's sail to accommodate a notice and comment period is contrary to the public's interest in ensuring the safety of spectators, event safety vessels and other users of the waterway.

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**. In addition to the reasons stated above, a delay or cancellation of the EAGLE's sail to accommodate 30 days for publication before the rule becomes effective is contrary to the public interest. Further, immediate action is needed to ensure a safe, vessel free zone exists around this large sailing vessel as it transits the various harbors.

Background and Purpose

The EAGLE is a large, steel hull sail training ship that is limited in its ability to quickly maneuver around smaller vessels. USCGC Barque Eagle will be making port calls in Rockland Harbor, ME and Portland Harbor ME as well as a port call in Portsmouth NH as part of the marine event "The Tall Ships Visit to Portsmouth Harbor, NH". This safety zone is required to protect persons and vessels from the safety hazards associated with a large sailing vessel's limited maneuverability.

Discussion of Rule

The Coast Guard is establishing a temporary moving safety zone excluding all vessels within a 100 yard radius of the USCGC Barque Eagle during the transit to the CG Moorings in Rockland Harbor, ME (44-069.33N 069-06.09W), as it transits outbound into the main channel in Penobscot Bay, as it transits inbound to State Pier in Portland Harbor, ME (43-39.38N 070-14.45W), as it transits outbound Casco Bay to Portland Head Light, inbound to Main State Pier in Portsmouth, NH (43-05.03N 070-45.65W) for "The Tall Ships visit to Portsmouth Harbor" marine event while the event is in progress, and as it transits outbound Portsmouth Harbor to the 2KR buoy. This safety zone is needed to protect spectators, event sponsors' safety vessels, and others in the maritime community from the safety hazards that may arise from an event of this type. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Sector Northern New England or his designated representative.

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.

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The effect of this rule will not be significant for the following reasons: The safety zones will be of limited duration. The events are designed to avoid, as much as practicable, deep draft, fishing, and recreational boating traffic routes. Vessels may be authorized to transit the zone with permission of the Captain of the Port, Sector Northern New England. Additionally, maritime advisories will be broadcast during the duration of the enforcement periods.

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 the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the safety zones. However, this rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the areas, the ample space available for vessels to maneuver and navigate around the zones, and advance notifications will be made to the local community by marine information broadcasts.

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 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 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 M16475.1D, 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 creation of a temporary safety zone for a limited period of time. An environmental analysis checklist and a categorical exclusion determination will be 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. 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0685 to read as follows:

§ 165.T01–0685 Safety Zone; USCG Barque Eagle transits of Rockland Harbor, ME, Portland Harbor, ME and Portsmouth Harbor, NH.

(a) Location. The following area is a safety zone: All navigable waters within 100 yards in all directions of the United States Coast Guard Barque EAGLE (USCGC EAGLE) during its transit and port calls in Rockland, ME, Portland, ME and Portsmouth, NH for “The Tall Ships Visit to Portsmouth Harbor, NH”.

(b) Enforcement periods:

(1) This rule will be enforced from 8 a.m. on July 24, 2009 to 4 p.m. on July 27, 2009 in Rockland Harbor, ME;

(2) This rule will be enforced from 8 a.m. on July 31, 2009 through 4 p.m. on

August 3, 2009 in Portland Harbor, ME; and,

(3) This rule will be enforced from 6 a.m. August 7, 2009 through 6 p.m. on August 10, 2009 in Portsmouth, NH.

(c) Regulations:

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone by any person or vessel are prohibited unless authorized by the Captain of the Port (COTP), Sector Northern New England or the COTP's designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone may contact the COTP or the COTP's designated representative at telephone number 207-767-0303 or designated representative on VHF Channel 13 (156.7 MHz) or VHF channel 16 (156.8 MHz) to seek permission to do so. If permission is granted, all persons and vessels must comply with the instructions provided by the COTP or the COTP's designated representative.

(d) Definitions.

(1) *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, or local law enforcement officer designated by or assisting the Captain of the Port (COTP).

Dated: July 24, 2009.

B.J. Downey, Jr.,

Commander, U.S. Coast Guard, Acting Captain of the Port, Sector Northern New England.

[FR Doc. E9-18631 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-32 and CP2009-43; Order No. 256]

Express Mail and Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail & Priority Mail Contract 7 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements under the law.

DATES: Effective August 5, 2009 and is applicable beginning July 27, 2009.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel,

202-789-6820 or
stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 33482 (July 13, 2009).

- I. Introduction
- II. Background
- III. Information Request
- IV. Comments
- V. Commission Analysis
- VI. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 7 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On July 2, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30, *et seq.*, to add Express Mail & Priority Mail Contract 7 to the Competitive Product List.¹ On July 6, 2009, the Postal Service filed a revised version of its filing which includes attachments inadvertently omitted from the July 2, 2009 request.² The Postal Service asserts that the Express Mail & Priority Mail Contract 7 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009-32.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* The contract has been assigned Docket No. CP2009-43.

On July 8, 2009, the Postal Service filed under seal revised versions of the financial analysis workbooks originally filed under seal on July 2, 2009.³

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Express Mail & Priority Mail Contract 7 and certification of the Governors' vote;⁴ (2) a redacted version of the

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 7 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 2, 2009.

² Errata to Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 7 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 6, 2009 (Request).

³ See Notice of the United States Postal Service of Filing Under Seal of Revised Financial Analysis Workbooks for Express Mail & Priority Mail Contract 7, July 8, 2009 (Revised Workbooks).

⁴ Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among

contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;⁵ (3) requested changes in the Mail classification Schedule product list;⁶ (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁷ and (5) certification of compliance with 39 U.S.C. 3633(a).⁸

In the Statement of Supporting Justification, Mary Prince Anderson, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See Id.*, Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2-3.

In Order No. 240, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁹

III. Information Request

On July 14, 2009, the Chairman issued an information request seeking responses to 6 questions.¹⁰ The information request was filed under seal. *Id.* On July 20, 2009, the Postal

other things, that the contract is not risk free, but concludes that the risks are manageable.

⁵ Attachment B to the Request.

⁶ Attachment C to the Request.

⁷ Attachment D to the Request.

⁸ Attachment E to the Request.

⁹ PRC Order No. 240, Notice and Order Concerning Express Mail & Priority Mail Contract 7 Negotiated Service Agreement, July 7, 2009 (Order No. 240).

¹⁰ Chairman's Information Request No. 1 and Notice of Filing of Questions Under Seal, July 14, 2009 (CHIR No. 1).

Service filed its responses to CHIR No. 1.¹¹

IV. Comments

Comments were filed by the Public Representative.¹² No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and concludes that the Express Mail & Priority Mail Contract 7 agreement comports with the requirements of title 39. *Id.* at 3–4. He further states that the agreement appears beneficial to the general public. *Id.* at 1.

The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. He also points out several contractual provisions that he believes are mutually beneficial to the parties and general public. *Id.*

V. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the Revised Workbooks, the Response to CHIR No. 1, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail & Priority Mail Contract 7 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Express Mail & Priority Mail Contract 7 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a

significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Express Mail & Priority Mail Contract 7 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & Priority Mail Contract 7 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Express Mail & Priority Mail Contract 7 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Express Mail & Priority Mail Contract 7 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C.

3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Express Mail & Priority Mail Contract 7 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 7 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

VI. Ordering Paragraphs

It is ordered:

1. Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

Issued: July 27, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

¹¹ See Notice of the United States Postal Service of Filing Response to Chairman's Information Request No. 1 Under Seal, July 20, 2009 (Response to CHIR No. 1).

¹² Public Representative Comments in Response to United States Postal Service Request to Add Express Mail & Priority Mail Contract 7 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 15, 2009 (Public Representative Comments).

**Appendix to Subpart A of Part 3020—
Mail Classification Schedule**

Part A—Market Dominant Products	High Density and Saturation Flats/Parcels [Reserved for Product Description]	International Ancillary Services [Reserved for Product Description]
1000 Market Dominant Product List	Carrier Route [Reserved for Product Description]	International Certificate of Mailing [Reserved for Product Description]
First-Class Mail	Letters [Reserved for Product Description]	International Registered Mail [Reserved for Product Description]
Single-Piece Letters/Postcards	Flats [Reserved for Product Description]	International Return Receipt [Reserved for Product Description]
Bulk Letters/Postcards	Not Flat-Machinables (NFM)s/Parcels [Reserved for Product Description]	International Restricted Delivery [Reserved for Product Description]
Flats	Periodicals [Reserved for Class Description]	Address List Services [Reserved for Product Description]
Parcels	Within County Periodicals [Reserved for Product Description]	Caller Service [Reserved for Product Description]
Outbound Single-Piece First-Class Mail	Outside County Periodicals [Reserved for Product Description]	Change-of-Address Credit Card Authentication [Reserved for Product Description]
International	Package Services [Reserved for Class Description]	Confirm [Reserved for Product Description]
Inbound Single-Piece First-Class Mail	Single-Piece Parcel Post [Reserved for Product Description]	International Reply Coupon Service [Reserved for Product Description]
International	Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description]	International Business Reply Mail Service [Reserved for Product Description]
Standard Mail (Regular and Nonprofit)	Bound Printed Matter Flats [Reserved for Product Description]	Money Orders [Reserved for Product Description]
High Density and Saturation Letters	Bound Printed Matter Parcels [Reserved for Product Description]	Post Office Box Service [Reserved for Product Description]
High Density and Saturation Flats/Parcels	Media Mail/Library Mail [Reserved for Product Description]	Negotiated Service Agreements [Reserved for Class Description]
Carrier Route	Special Services [Reserved for Class Description]	HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]
Letters	Ancillary Services [Reserved for Product Description]	Bookspan Negotiated Service Agreement [Reserved for Product Description]
Flats	Address Correction Service [Reserved for Product Description]	Bank of America Corporation Negotiated Service Agreement
Not Flat-Machinables (NFM)s/Parcels	Applications and Mailing Permits [Reserved for Product Description]	The Bradford Group Negotiated Service Agreement
Periodicals	Business Reply Mail [Reserved for Product Description]	Part B—Competitive Products
Within County Periodicals	Bulk Parcel Return Service [Reserved for Product Description]	2000 Competitive Product List
Outside County Periodicals	Certified Mail [Reserved for Product Description]	Express Mail
Package Services	Certificate of Mailing [Reserved for Product Description]	Express Mail
Single-Piece Parcel Post	Collect on Delivery [Reserved for Product Description]	Outbound International Expedited Services
Inbound Surface Parcel Post (at UPU rates)	Delivery Confirmation [Reserved for Product Description]	Inbound International Expedited Services 1 (CP2008–7)
Bound Printed Matter Flats	Insurance [Reserved for Product Description]	Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Bound Printed Matter Parcels	Merchandise Return Service [Reserved for Product Description]	Priority Mail
Bound Printed Matter Parcels	Parcel Airlift (PAL) [Reserved for Product Description]	Priority Mail
Media Mail/Library Mail	Registered Mail [Reserved for Product Description]	Outbound Priority Mail International
Special Services	Return Receipt [Reserved for Product Description]	Inbound Air Parcel Post
Ancillary Services	Return Receipt for Merchandise [Reserved for Product Description]	Royal Mail Group Inbound Air Parcel Post Agreement
International Ancillary Services	Restricted Delivery [Reserved for Product Description]	Parcel Select
Address List Services	Shipper-Paid Forwarding [Reserved for Product Description]	Parcel Return Service
Caller Service	Signature Confirmation [Reserved for Product Description]	International
Change-of-Address Credit Card Authentication	Special Handling [Reserved for Product Description]	International Priority Airlift (IPA)
Confirm	Stamped Envelopes [Reserved for Product Description]	International Surface Airlift (ISAL)
International Reply Coupon Service	Stamped Cards [Reserved for Product Description]	International Direct Sacks—M-Bags
International Business Reply Mail Service	Premium Stamped Stationery [Reserved for Product Description]	Global Customized Shipping Services
Money Orders	Premium Stamped Cards [Reserved for Product Description]	Inbound Surface Parcel Post (at non-UPU rates)
Post Office Box Service		Canada Post—United States Postal Service Contractual Bilateral
Negotiated Service Agreements		Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
HSBC North America Holdings Inc. Negotiated Service Agreement		International Money Transfer Service
Bookspan Negotiated Service Agreement		International Ancillary Services
Bank of America Corporation Negotiated Service Agreement		Special Services
The Bradford Group Negotiated Service Agreement		Premium Forwarding Service
Inbound International Canada Post— United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services		Negotiated Service Agreements
Market Dominant Product Descriptions		Domestic
First-Class Mail		Express Mail Contract 1 (MC2008–5)
[Reserved for Class Description]		Express Mail Contract 2 (MC2009–3 and CP2009–4)
Single-Piece Letters/Postcards		
[Reserved for Product Description]		
Bulk Letters/Postcards		
[Reserved for Product Description]		
Flats		
[Reserved for Product Description]		
Parcels		
[Reserved for Product Description]		
Outbound Single-Piece First-Class Mail		
International		
[Reserved for Product Description]		
Inbound Single-Piece First-Class Mail		
International		
[Reserved for Product Description]		
Standard Mail (Regular and Nonprofit)		
[Reserved for Class Description]		
High Density and Saturation Letters		
[Reserved for Product Description]		

Express Mail Contract 3 (MC2009–15 and CP2009–21)
 Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
 Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
 Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
 Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
 Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
 Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
 Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
 Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
 Priority Mail Contract 1 (MC2008–8 and CP2008–26)
 Priority Mail Contract 2 (MC2009–2 and CP2009–3)
 Priority Mail Contract 3 (MC2009–4 and CP2009–5)
 Priority Mail Contract 4 (MC2009–5 and CP2009–6)
 Priority Mail Contract 5 (MC2009–21 and CP2009–26)
 Priority Mail Contract 6 (MC2009–25 and CP2009–30)
 Priority Mail Contract 7 (MC2009–25 and CP2009–31)
 Priority Mail Contract 8 (MC2009–25 and CP2009–32)
 Priority Mail Contract 9 (MC2009–25 and CP2009–33)
 Priority Mail Contract 10 (MC2009–25 and CP2009–34)
 Priority Mail Contract 11 (MC2009–27 and CP2009–37)
 Priority Mail Contract 12 (MC2009–28 and CP2009–38)
 Priority Mail Contract 13 (MC2009–29 and CP2009–39)
 Priority Mail Contract 14 (MC2009–30 and CP2009–40)
 Outbound International
 Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
 Global Expedited Package Services (GEPS) Contracts
 GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
 Global Plus Contracts
 Global Plus 1 (CP2008–9 and CP2008–10)
 Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
 Inbound International
 Inbound Direct Entry Contracts With Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
 International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
 Competitive Product Descriptions
 Express Mail
 [Reserved for Group Description]
 Express Mail
 [Reserved for Product Description]
 Outbound International Expedited Services
 [Reserved for Product Description]
 Inbound International Expedited Services
 [Reserved for Product Description]
 Priority

[Reserved for Product Description]
 Priority Mail
 [Reserved for Product Description]
 Outbound Priority Mail International
 [Reserved for Product Description]
 Inbound Air Parcel Post
 [Reserved for Product Description]
 Parcel Select
 [Reserved for Group Description]
 Parcel Return Service
 [Reserved for Group Description]
 International
 [Reserved for Group Description]
 International Priority Airlift (IPA)
 [Reserved for Product Description]
 International Surface Airlift (ISAL)
 [Reserved for Product Description]
 International Direct Sacks—M-Bags
 [Reserved for Product Description]
 Global Customized Shipping Services
 [Reserved for Product Description]
 International Money Transfer Service
 [Reserved for Product Description]
 Inbound Surface Parcel Post (at non-UPU rates)
 [Reserved for Product Description]
 International Ancillary Services
 [Reserved for Product Description]
 International Certificate of Mailing
 [Reserved for Product Description]
 International Registered Mail
 [Reserved for Product Description]
 International Return Receipt
 [Reserved for Product Description]
 International Restricted Delivery
 [Reserved for Product Description]
 International Insurance
 [Reserved for Product Description]
 Negotiated Service Agreements
 [Reserved for Group Description]
 Domestic
 [Reserved for Product Description]
 Outbound International
 [Reserved for Group Description]

Part C—Glossary of Terms and Conditions
 [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–18737 Filed 8–4–09; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0889; FRL-8430-2]

Amine Salts of Alkyl (C₈-C₂₄) Benzenesulfonic Acid (Dimethylaminopropylamine, Isopropylamine, Mono-, Di-, and Triethanolamine); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of amine salts of

alkyl (C₈-C₂₄) benzenesulfonic acid (dimethylaminopropylamine, isopropylamine, mono-, di-, and triethanolamine) when used as an inert ingredient in pesticide formulations applied to growing crops and applied to animals. The Joint Inerts Task Force, Cluster Support Team Number 8, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of amine salts of alkyl (C₈-C₂₄) benzenesulfonic acid (dimethylaminopropylamine, isopropylamine, mono-, di-, and triethanolamine).

DATES: This regulation is effective August 5, 2009. Objections and requests for hearings must be received on or before October 5, 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-2008-0889. 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: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8811; e-mail address: leifer.kerry@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>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

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-2008-0889 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 October 5, 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-2008-0889, 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. Background

In the **Federal Register** of March 25, 2009 (74 FR 12856) (FRL-8399-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7472) by The Joint Inerts Task Force (JITF), Cluster Support Team 8 (CST 8), c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.920 and 40 CFR 180.930 be amended by establishing exemptions from the requirement of a tolerance for residues of the inert ingredient amine salts of alkyl (C₈-C₂₄) benzenesulfonic acid (dimethylaminopro-pylamine, isopro-pylamine, mono-, di-, and triethanol amine) (herein referred to in this document as ASABSA) including CAS Reg. Nos. 68953-97-9, 26545-53-9, 877677-48-0, 319926-68-6, 90194-53-9, 55470-69-4, 68910-32-7, 26264-05-1, 157966-96-6, 68584-24-7, 68648-81-7, 68649-00-3, 68953-93-5, 90218-35-2, 27323-41-7, 68584-25-8, 68648-96-4, 68411-31-4, 90194-42-6, and 1093628-27-3, when used as an inert ingredient in pesticide formulations applied to growing crops under 40 CFR 180.920 and applied to animals under 40 CFR 180.930. That notice referenced a summary of the petition prepared by The JITF, CST 8, the petitioner, which is available to the public in the docket, <http://www.regulations.gov>. There were

no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the exemption requested by limiting the diethanolamine salt of alkyl (C₈-C₂₄) benzenesulfonic acid (CAS Reg. Nos. 26545-53-9 and 68953-97-9) to a maximum of 7% by weight in pesticide formulations intended for application to growing crops and to animals. This limitation is based on the Agency's risk assessment which can be found at <http://www.regulations.gov> in documents "Dimethylaminopro-pylamine, Isopropylamine, Ethanol amine and Triethanolamine Salts of Alkyl (C₈-C₂₄) Benzenesulfonic Acid (JITF CST 8 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations and Diethanolamine Salt of Alkyl (C₈-C₂₄) Benzenesulfonic Acid (DEA - JITF CST 8 Inert Ingredient). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations," in docket ID number EPA-HQ-OPP-2008-0889.

This petition was submitted in response to a final rule that was published in the **Federal Register** of August 9, 2006 (71 FR 45415) (FRL-8084-1) in which the Agency revoked, under section 408(e)(1) of FFDCA, the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by section 408(b)(2) of FFDCA. The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009 in the **Federal Register** of August 4, 2008 (73 FR 45317) (FRL-8373-6) to allow for data to be submitted to support the establishment of tolerance exemptions for these inert ingredients prior to the effective date of the tolerance exemption revocation.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose;

wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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. * * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

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 exemption from the requirement of a tolerance for residues of ASABSA when used as inert ingredients in pesticide formulations applied to growing crops and to animals. 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.

Amine salts of alkyl (C₈-C₂₄) benzene sulfonic acid readily and fully dissociate to the corresponding amine and alkyl (C₈-C₂₄) benzenesulfonic acid constituents, therefore the hazard assessment conducted to support the requested exemption from the requirement of a tolerance for ASABSA is primarily based on the hazard assessment for each of the constituents, specifically each associated amine (i.e., dimethylaminopropylamine, isopropylamine, ethanolamine, diethanolamine and triethanolamine) and alkyl (C₈-C₂₄) benzenesulfonic acid.

The hazard profile and endpoints for risk assessment for alkylbenzene sulfonic acid have previously been addressed as part of the tolerance reassessment for tolerance exemptions for alkyl (C₈-C₂₄) benzenesulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts <http://www.epa.gov/oppr001/inerts/alkylc8.pdf>. The toxicology database for these alkyl benzene sulfonates consists almost entirely of published literature, and is essentially complete and of acceptable quality to assess the potential hazard to humans. The alkylbenzene sulfonates are readily absorbed following oral ingestion, but not following dermal exposure. Following oral exposure, they are readily metabolized, excreted fairly rapidly, and do not accumulate in any tissues. Available acute toxicity data show that alkylbenzene sulfonates are not highly acutely toxic, are irritating to the eye and skin, and are not skin sensitizers. Subchronic and chronic exposures show that the liver, kidney and intestinal tract (following oral exposures) are the major target organs of toxicity. Both *in vitro* and *in vivo* genotoxicity data show that alkylbenzene sulfonates are not genotoxic. The alkylbenzene sulfonates did not cause reproductive or developmental toxicity in acceptable studies. Early (pre Good Laboratory Practice standards) carcinogenicity studies indicate that alkylbenzene sulfonates do not cause an increase in tumor incidence.

The existing toxicology database for the dimethylaminopropylamine, isopropylamine, ethanolamine and triethanolamine salt of alkyl (C₈-C₂₄) benzenesulfonic acid consists of an OPPTS Harmonized Test Guideline

870.3550 study and acute, subchronic, chronic, carcinogenicity, developmental, and mutagenicity studies on the individual amines. In addition, the petitioner submitted an OPPTS Harmonized Test Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening tests on isopropylamine dodecylbenzene sulfonate. The Agency considered these data in its evaluation of amine toxicity. While the test compound for the study is effectively a mixture of the amine and the acid, the study findings do provide some insight into the potential toxicity of the amine constituent.

A summary of the toxicological data considered as part of this action is given below:

1. *Isopropylamine dodecylbenzene sulfonate* (CAS No. 26264-05-1). In an oral gavage OPPTS Harmonized Test Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening tests, the parental LOAEL was 320 milligrams/kilograms/day (mg/kg/day) (highest dose tested, (HDT)) based on excessive salivation (both sexes), soft/liquid feces (males), lesions of the forestomach (both sexes). No reproductive or developmental toxicity or neurotoxicity was observed. The NOAEL was 80 mg/kg/day.

2. *Ethanolamine* (CAS No. 141-43-5). Ethanolamine is not acutely toxic in rats by the oral route of exposure but appears to be very acutely toxic by the dermal route of exposure, although this may be a species-specific effect in the rabbit. It is a skin sensitizer and is corrosive to the eye and skin. There is no evidence of mutagenicity in the Ames, *Saccharomyces cerevisiae* gene conversion, mouse micronucleus, cell transformation, and SCE human lymphocytes tests. In a dermal rat developmental toxicity study conducted with ethanolamine, no maternal or developmental toxicity was observed at 225 mg/kg/day (HDT). Also in a dermal rabbit developmental toxicity study, no maternal or developmental toxicity was observed at 75 mg/kg/day (HDT). In an oral rat developmental toxicity study, the maternal LOAEL was 450 mg/kg/day (HDT) based on decreased body weights during the latter part of gestation and throughout lactation. The developmental LOAEL was 450 mg/kg/day based on decrease body weights in female fetuses on postnatal day (PND) 1 and 4. The maternal/developmental NOAEL was 120 mg/kg/day.

3. *Triethanolamine* (CAS No. 102-71-6). In acute toxicity studies, triethanolamine is mildly to moderately toxic by the oral and dermal routes of

exposure. It is not irritating in eye and skin irritation studies, and it is not a skin sensitizer. There is no evidence of mutagenicity in the Ames, mouse micronucleus, sex-linked recessive lethal, and Chinese hamster ovary (CHO) cell cytogenetics tests. In a 14-day inhalation study in rat, the NOAEL was 0.25 milligram/liter (mg/L) (approximate oral equivalent dose of 75 mg/kg/day) and the LOAEL was 0.5 mg/L based on increased kidney weights of males and females. In an oral mouse developmental toxicity study (Chernoff-Kavlock screening test), no maternal or developmental toxicity was observed at 1,125 mg/kg/day (only dose tested). In a 13-week dermal study in rat, the NOAEL was 1,000 mg/kg/day and the LOAEL was 2,000 mg/kg/day (HDT) based on reduced body gain and clinical observations (irritation, scaliness, and crustiness of the skin at the site of application). In a 13-week dermal study in mouse, the NOAEL was 2,000 mg/kg/day and the LOAEL was 4,000 mg/kg/day (HDT) based on clinical observations (irritation, scaliness, and discoloration of the skin at the site of application).

4. *Isopropylamine* (CAS No. 75-31-0). In acute toxicity studies, isopropylamine is moderately acutely toxic in rats by the oral route of exposure, but is less toxic by the dermal route and is not toxic by the inhalation route of exposure. Rabbits appear to be more sensitive than rats showing significantly greater acute toxicity by the dermal route. Isopropylamine is not a skin sensitizer. There is no evidence of mutagenicity in the Ames, chromosomal aberrations in human lymphocytes and unscheduled DNA synthesis in rat hepatocytes tests. In a 28-day inhalation study, Sprague-Dawley rats were exposed to inhalation dosage levels of 0, 0.1, 0.5, and 1.35 mg/L for 6 hours/day for 5 days/week. The NOAEL was 0.1 mg/L and the LOAEL was 0.5 mg/L based on microscopic ocular and nasal lesions. In a developmental study, Sprague-Dawley rats were exposed to inhalation dosage levels of 0, 0.1, 0.5, and 1.0 mg/L for 6 hours/day from gestation day (GD) 6 through 15. The maternal toxicity was observed at 1.0 mg/L (HDT) based on decreased body weight and body weight gain. At this dose, no developmental toxicity was observed.

5. *Dimethylaminopropylamine* (CAS No. 109-55-7). Dimethylaminopropylamine is mild to moderately toxic by the oral and inhalation routes of exposure, but it is not a skin sensitizer. There is no evidence of mutagenicity in the Ames and mouse micronucleus tests.

Following a 28-day gavage study in Wistar rats, mortality (4/5 females) and clinical signs (males: irregular respiration and respiratory sounds; females: decreased spontaneous activity, stilted gait, swollen abdomen, and impaired respiration) were observed at 250 mg/kg/day (HDT). In an OPPTS Harmonized Test Guideline 870.3550 reproduction and developmental toxicity screening test in Sprague-Dawley rats, parental toxicity was observed at 200 mg/kg/day (HDT) based on decreased body weight gain and clinical signs (respiratory sounds and piloerection). Reproductive and developmental toxicity were not observed at any dose level.

6. *Diethanolamine* (CAS No. 11-42-2). The existing toxicology database for diethanolamine (DEA) consists of several subchronic oral and dermal toxicity studies in rats and mice, carcinogenicity studies in rats and mice, oral and dermal developmental toxicity studies in rats and rabbits, and acute and mutagenicity data. Following repeat oral exposure to DEA, the kidney, liver, and blood are the major target organs. Repeat oral exposure via drinking water resulted in a microcytic anemia that does not involve the bone marrow in rats at 97 mg/kg/day in males and 57 mg/kg/day in females. Increased kidney weights were associated with renal tubular cell necrosis, decreased renal function, increased incidences or severity of nephropathy, and/or mineralization in rats at 97 mg/kg/day (males) and 57 mg/kg/day (females) and in mice at 104 mg/kg/day (lowest dose tested, (LDT)) in males and 142 mg/kg/day (LDT) in females. Increased liver weights were associated with cytoplasmic vacuolization and degeneration of centrilobular hepatocytes in rats and hypertrophy, individual cell necrosis or foci of necrotic hepatocytes in mice. Dose-related decreases in testis and epididymis weights were associated with testicular degeneration, decreased sperm motility, and decreased sperm count in male rats at 97 mg/kg/day. Similar kidney and liver effects were observed following repeat dermal exposure at dose levels of 32/mg/kg/day in rats and 80 mg/kg/day in mice. Demyelination in the brain (medulla oblongata) and spinal cord was observed in rats of both sexes following oral and dermal exposure at dose levels as low as 250 mg/kg/day, with the female being more sensitive. Mortality and neurological symptoms (tremors, stiffness, and ataxia progressing to paresis and paralysis) have been reported following exposure via over-

the-counter oral flea treatment (53% DEA) of dogs and cats, however, there are no registered pet care use products containing the DEA salt form of ASABSA.

Developmental toxicity was observed in rats following both oral and dermal exposure to the maternal animal during gestation days (GD) 6-15. Maternal toxicity, as evidenced by decreased body weight/gain and food consumption and/or increased kidney weight, was observed at the same dose levels (125 mg/kg/day) as the developmental effects [an increase in postnatal mortality (PND 0 through 4), an increase in postimplantation loss, and reduced pup body weight following oral exposure. An increased incidence of skeletal variations was observed following dermal exposure at 1500 mg/kg/day (HDT)]. Developmental toxicity was not observed in rabbits following oral or dermal exposure of the maternal animal during GD 6 through 18.

7. *Metabolism*. The alkyl (C₈-C₂₄) benzenesulfonic acid amine salts undergo rapid dissociation *in vivo* to form an alkyl (C₈-C₂₄) benzenesulfonic acid and an amine. The two entities would be absorbed and metabolized independently. The alkyl (C₈-C₂₄) benzenesulfonic acid should be readily conjugated and rapidly excreted with little alkyl aromatic chain degradation (JITF Submission, 2008, pages 11 and 21). Primary, secondary or tertiary amines should undergo oxidative amine metabolism followed by excretion. Primary aliphatic amines (ethanolamine, isopropylamine) are oxidized to aldehydes/ketones and or acid (glycolic acid or acetone) with release of ammonia. The glycolic acid may further oxidized and or conjugated and excreted. The acetone could be excreted through respiration or further oxidized to methylglyoxyl and then excreted. Secondary aliphatic amines (dimethylaminopropylamine and diethanolamine) may follow various oxidative patterns and some are excreted unchanged. Small molecular weight amines may be exhaled via respiration. Tertiary aliphatic amines (triethanolamine) may be oxidized to amine oxides, which may be excreted in the urine or deaminated with the eventual resultant being release of glycolic acid which may be further oxidized and or conjugated and excreted.

Specific information on the studies received and the nature of the adverse effects caused by ASABSA and its constituents 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 documents “Dimethylaminopropylamine, Isopropylamine, Ethanolamine and Triethanolamine Salts of Alkyl (C₈-C₂₄) Benzenesulfonic Acid (JITF CST 8 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations and Diethanolamine Salt of Alkyl (C₈-C₂₄) Benzenesulfonic Acid (DEA - JITF CST 8 Inert Ingredient). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations,” in docket ID number EPA-HQ-OPP-2008-0889 and at <http://www.epa.gov/opprd001/inerts/alkylc8.pdf>.

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-, intermediate-, 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 ASABSA used for human health risk is shown in the following Table 1.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ASABSA FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)	An effect attributable to a single exposure was not identified.		
Chronic dietary (all populations) dimethyl aminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C ₈ -C ₂₄) benzenesulfonic acid.	NOAEL = 50 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x	Chronic RfD = 0.5 mg/kg/day cPAD = 0.5 mg/kg/day	28-day oral (gavage) toxicity study in rats with dimethylaminopropylamine NOAEL = 50 mg/kg LOAEL = 250 mg/kg based on mortality (4/5 females) and clinical signs (males: irregular respiration and respiratory sounds; females: decreased spontaneous activity, stilted gait, swollen abdomen, impaired respiration) OECD SIDS. UNEP Publication and BUA Report, October 1996 plus weight of evidence of three studies with alkylbenzene sulfonates: 1) Rat reproduction study LOAEL = 250 mg/kg/day based on decreased Day 21 female pup body weight (Buehler, E. et al. 1971. <i>Tox. Appl. Pharmacol.</i> 18:83-91) 2) 9-month drinking water rat study LOAEL = 145 mg/kg/day based on decreased body weight gain, and serum/ biochemical and enzymatic changes in the liver and kidney (Yoneyama et al. 1976 <i>Ann. Rep. Tokyo Metropol. Res. Lab. Public Health</i> 27(2):105-112) 3) 6-month rat dietary study LOAEL = 114 mg/kg/day (0.2%) based on increased caecum weight and slight kidney damage (Yoneyama et al 1972 <i>Ann. Rep. Tokyo Metropol. Res. Lab. Public Health</i> 24:409-440)

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ASABSA FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Chronic dietary (all populations) diethanolamine salt of alkyl (C ₈ -C ₂₄) benzenesulfonic acid	NOAEL = 48 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 10x	Chronic RfD = 0.5 mg/kg/day cPAD = 0.05 mg/kg/day	Subchronic (13-week) oral toxicity study in rats (NTP, 1992) Female LOAEL = 124 mg/kg/day demyelination of the brain and spinal cord Male LOAEL = 97 mg/kg/day, based on decreased testis and epididymis weight associated with degeneration of seminiferous epithelium, decreased numbers of spermatogenic cells, reduced size of seminiferous tubules, decreased sperm, sperm motility, and sperm count
Incidental Oral and Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months) dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C ₈ -C ₂₄) benzenesulfonic acid.	NOAEL = 50 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x inhalation toxicity is assumed to be equivalent to oral toxicity	Residential LOC for MOE = 100	28-day oral (gavage) toxicity study in rats with dimethylaminopropylamine NOAEL = 50 mg/kg LOAEL = 250 mg/kg based on mortality (4/5 females) and clinical signs (males: irregular respiration and respiratory sounds; females: decreased spontaneous activity, stilted gait, swollen abdomen, impaired respiration) OECD SIDS. UNEP Publication and BUA Report, October 1996 plus weight of evidence of three studies with alkylbenzene sulfonates: 1) Rat reproduction study LOAEL = 250 mg/kg/day based on decreased Day 21 female pup body weight (Buehler, E. et al. 1971. <i>Tox. Appl. Pharmacol.</i> 18:83-91) 2) 9-month drinking water rat study LOAEL = 145 mg/kg/day based on decreased body weight gain, and serum/ biochemical and enzymatic changes in the liver and kidney (Yoneyama et al. 1976 <i>Ann. Rep. Tokyo Metrop. Res. Lab. Public Health</i> 27(2):105-112) 3) 6-month rat dietary study LOAEL = 114 mg/kg/day (0.2%) based on increased caecum weight and slight kidney damage (Yoneyama et al 1972 <i>Ann. Rep. Tokyo Metrop. Res. Lab. Public Health</i> 24:409-440)
Incidental Oral and Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months)--diethanolamine salt of alkyl (C ₈ -C ₂₄) benzenesulfonic acid.	NOAEL = 48 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 10x inhalation toxicity is assumed to be equivalent to oral toxicity	Residential LOC for MOE = 1,000	Subchronic (13-week) oral toxicity study in rats (NTP, 1992) Female LOAEL = 124 mg/kg/day based on demyelination of the brain and spinal cord Male LOAEL = 97 mg/kg/day, based on decreased testis and epididymis weight associated with degeneration of seminiferous epithelium, decreased numbers of spermatogenic cells, reduced size of seminiferous tubules, decreased sperm, sperm motility, and sperm count
Dermal (short- and intermediate-term) -- dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C ₈ -C ₂₄) benzenesulfonic acid.	No systemic toxicity observed in available dermal toxicity study. Low potential for dermal absorption to ionized amine. No quantitative risk assessment required		
Dermal (short- and intermediate-term) — diethanolamine salt of alkyl (C ₈ -C ₂₄) benzenesulfonic acid	NOAEL = 125 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 10x	Residential LOC for MOE = 1,000	

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ASABSA FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	Classification: Based on SAR analysis, ASABSA is not expected to be carcinogenic. No evidence of carcinogenicity in the available data or SAR analysis for alkyl benzene sulfonates, dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine. No concern for diethanolamine based on SAR analysis, limited evidence in experimental animals; not classifiable as to its carcinogenicity to humans		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). PAD = population adjusted dose (a=acute, c=chronic). FQPA SF = FQPA Safety Factor. RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable.

C. Exposure Assessment

Very limited information is available for ASABSA with respect to plant and animal metabolism or environmental degradation. The Agency relied collectively on information provided on the representative chemical structures, the generic cluster structures, the modeled physicochemical information, as well as the structure-activity relationship information. Additionally, information on other surfactants and chemicals of similar size and functionality was considered to determine the residues of concern for these inert ingredients. ASABSA are likely to be fully dissociated in solution. If dissociated amine counter ion or alkylbenzenesulfonic acid residues on plants and livestock undergo any metabolism or hydrolysis, they will likely result as highly polar or conjugated residues, which would not be of concern.

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to ASABSA, EPA considered exposure under the petitioned-for exemptions from the requirement of a tolerance. EPA assessed dietary exposures from ASABSA in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of ASABSA were seen in the toxicity databases. Therefore, an acute dietary risk assessment for ASABSA is not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment for ASABSA, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for ASABSA. In the absence of specific residue data, EPA has developed an approach which uses surrogate

information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data can be found at <http://www.regulations.gov> in the document “Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts”, in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products are generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product relative to that of the active ingredient.

EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of diethanolamine salts of alkyl (C₈–C₂₄) benzenesulfonic acid that may be in formulations (no more than 7%, which corresponds to a concentration of 2% diethanolamine) and assumed that the diethanolamine salts of alkyl (C₈–C₂₄) benzenesulfonic acid are at the maximum limitations rather than at equal quantities with the active ingredient. This remains a very conservative assumption because surfactants are generally used at levels far below these percentages. For example, EPA examined several of the pesticide products associated with the tolerance/commodity combination which are the driver of the risk assessment and found that these products did not contain surfactants at levels greater than 2.25% and that none of the surfactants were diethanolamine salts of alkyl (C₈–C₂₄) benzenesulfonic acid.

Second, the conservatism of this methodology is compounded by EPA’s decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA’s assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient.

In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, and then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer.* The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. Additionally, there is not evidence of carcinogenicity of the ASABSA amine or alkylbenzenesulfonic acid constituents. Therefore, a cancer dietary exposure assessment is not necessary to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for ASABSA. Tolerance level residues and/or 100% crop treated were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for ASABSA in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of ASABSA. Further information regarding EPA drinking water models used in the pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

A screening level drinking water analysis, based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of ASABSA. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of ASABSA were conducted. Modeled acute drinking water values ranged from 0.001 parts per billion (ppb) to 41 ppb. Modeled chronic drinking water values ranged

from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at <http://www.regulations.gov> in the documents “Dimethylaminopropylamine, Isopropylamine, Ethanolamine and Triethanolamine Salts of Alkyl (C₈-C₂₄) Benzenesulfonic Acid (JITF CST 8 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations and Diethanolamine Salt of Alkyl (C₈-C₂₄) Benzenesulfonic Acid (DEA - JITF CST 8 Inert Ingredient). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations,” in docket ID number EPA-HQ-OPP-2008-0889.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for ASABSA, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for chronic dietary risk assessments for the parent compounds and for the metabolites of concern. These values were directly entered into the dietary exposure model.

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). ASABSA may be used as inert ingredients in pesticide products that are registered for specific uses that may result in outdoor residential exposures. A screening level residential exposure and risk assessment was completed for pesticide products containing ASABSA as inert ingredients. In this assessment, representative scenarios, based on end-use product application methods and labeled application rates, were selected. For each of the use scenarios, the Agency assessed residential handler (applicator) inhalation and dermal exposure for use scenarios with high exposure potential (i.e., exposure scenarios with high-end unit exposure values) to serve as a screening assessment for all potential residential pesticides containing ASABSA. Similarly, residential postapplication dermal and oral exposure assessments were also performed utilizing high-end exposure scenarios. Further details of this residential exposure and risk analysis can be found at <http://www.regulations.gov> in the document

“JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations,” in docket ID number EPA-HQ-OPP-2008-0710.

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 ASABSA to share a common mechanism of toxicity with any other substances, and ASABSA do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that ASABSA do 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.*—i. *Dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid.* The available mammalian toxicology database for dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic is complete with respect to assessing the increased susceptibility to infants and

children as required by FQPA for the dimethylaminopropylamine, isopropylamine, ethanolamine and triethanolamine salts of alkyl (C₈-C₂₄) benzene sulfonic acid. There was no increased susceptibility to the offspring of rats following prenatal and postnatal exposure in the OPPTS Harmonized Test Guidelines 870.3550 and 870.3650 reproductive/developmental screening studies, and developmental effects studies.

There was no increased susceptibility to the offspring of rats following prenatal and postnatal exposure in the OPPTS Harmonized Test Guideline 870.3650 study with isopropylamine dodecylbenzene sulfonate. Developmental toxicity was not observed, whereas parental toxicity was manifested as excessive salivation in both sexes, soft feces in males, and lesions of the forestomach in both sexes. No increased susceptibility was observed in offspring of rats following exposure in the OPPTS Harmonized Test Guideline 870.3550 study with dimethylaminopropylamine. Developmental toxicity was not observed, whereas parental toxicity was manifested as decreased body-weight gain and clinical signs. Susceptibility was not demonstrated in the offspring in a rat developmental toxicity study with isopropylamine following inhalation exposure. Developmental toxicity was not observed, whereas parental toxicity was manifested as decreased body weight and body-weight gain. In developmental toxicity studies with ethanolamine following dermal (rat and rabbit) exposure, developmental and maternal toxicity were not observed. In a developmental toxicity study, increased susceptibility to the offspring was not observed following oral exposure to ethanolamine. Developmental toxicity was observed (decreased body weight in female fetuses on PND 1-4) at the same dose level where maternal toxicity was observed (decreased body weight during the latter part of gestation and throughout lactation). Since a clear NOAEL of 120 mg/kg/day was identified for offspring effects, and the selected point of departure of 50 mg/kg/day (mortality and clinical signs) for the dietary and inhalation risk assessments is protective of the offspring effects, there are no residual concerns.

There is no evidence in the available toxicity studies or scientific literature to indicate neurotoxic effects of these amines in laboratory animals. The clinical signs observed in females in the 28-day study with dimethylaminopropylamine (stilted gait

and decreased spontaneous activity are considered agonal in nature.

The prenatal developmental and reproduction studies with alkylbenzene sulfonates showed no qualitative or quantitative evidence of increased susceptibility. Several reproduction and many developmental studies have been performed with alkylbenzene sulfonates in a number of animal species. In the developmental studies, whenever toxicity was observed in adults, it was generally for mild effects (slight body weight changes, intestinal disturbances) except for severe dermal irritation effects in dermal developmental studies. Any developmental toxicity observed in these same studies included minor increases in visceral/skeletal anomalies and some fetal losses; but only at maternally toxic doses. In one reproduction study, there were slight changes in hematology and histopathology (both within historical control ranges) and slight decreases in body weight in the offspring at the highest dose of 250 mg/kg/day (at which there were no effects on the parental generation). There were no effects in either the parents or offspring in the other two alkyl benzenesulfonate reproductive toxicity studies at the high dose tested of 70 and 170 mg/kg/day, respectively.

ii. *Diethanolamine salt of alkyl (C₈-C₂₄) benzenesulfonic acid (DEA)*. There is no OPPTS Harmonized Test Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test available on DEA. The toxicology database on DEA consists of open literature studies that include oral and dermal exposure developmental toxicity studies in rats and a dermal exposure developmental toxicity study in rabbits. There are no reproductive toxicity or neurotoxicity studies available on DEA.

No evidence of increased susceptibility to the offspring of rats or rabbits following prenatal dermal exposure was located. There was qualitative prenatal susceptibility in the rat oral developmental toxicity study. The developmental findings with a NOAEL of 50 mg/kg/day were well-characterized and included increased developmental sensitivity in the form of increased postnatal day (PND) 0 through 4 mortality and post implantation loss, and reduced pup body weight at 125 mg/kg/day (developmental LOAEL). The maternal toxicity NOAEL/LOAEL of 50/125 mg/kg/day was based on increased absolute liver weight. Developmental toxicity was demonstrated in the rat following dermal exposure to the maternal animal during gestation days

(GD) 6 through 15, as evidenced by increased incidence of skeletal variations at 1500 mg/kg/day (HDT). The NOAEL for developmental toxicity was 500 mg/kg/day; the LOAEL for maternal toxicity was 150 mg/kg (LDT) based on microcytic anemia with abnormal red blood cell morphology. The degree of concern for the increased qualitative susceptibility seen in the oral developmental toxicity study in rats (prenatal exposure) is low since a clear NOAEL/LOAEL was established for oral developmental toxicity and since a more sensitive endpoint of concern (48 mg/kg/day, the NOAEL from the rat subchronic toxicity study) has been utilized in assessing the risks from incidental and chronic oral exposure to the diethanolamine salt of alkyl (C₈-C₂₄) benzenesulfonic acid.

Demyelination has been observed in the brain (medulla) and spinal cord of rats following oral and dermal exposure, and decreased testis and epididymis weights associated with degeneration of seminiferous epithelium, decreased numbers of spermatogenic cells, reduced size of seminiferous tubules, decreased sperm; decreased sperm motility and sperm count have been observed in male rats following oral exposure.

DEA is structurally related to the essential nutrient choline, and choline deficiency during pregnancy has been shown to reduce neurogenesis and increase apoptosis in rat and mouse fetal hippocampus. In the open literature, DEA has been shown to alter neurogenesis and induce apoptosis in fetal mouse hippocampus following dermal exposure of the maternal animal to DEA during pregnancy.

The existing toxicology database is not adequate for assessing the sensitivity of infants and children to DEA exposure because a reproduction study is not available and in light of the findings in adult animals (demyelination in the brain and spinal cord and degeneration of the seminiferous tubules of the testis) that suggest the potential for developmental, reproductive, and/or neurodevelopmental toxicity in the young animal. The particular findings in the parental animals lead to uncertainties for the offspring. There is a concern for neurodevelopment since this is not addressed in the currently available database.

3. *Conclusion*.—i. *Dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid*. EPA has determined that reliable data show that 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:

a. The toxicity database for dimethyl aminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid is considered adequate for assessing the risks to infants and children to dimethyl aminopropylamine, isopropylamine, ethanolamine and triethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid exposures (the available studies are described in Unit IV.D.2.).

b. No susceptibility was demonstrated in the offspring in the OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats with isopropylamine dodecylbenzene sulfonate following prenatal and postnatal exposure.

c. No susceptibility was demonstrated in the offspring in the OPPTS Harmonized Guideline 870.3550 reproduction/developmental toxicity screening test with dimethylaminopropylamine following prenatal and postnatal exposure.

d. No susceptibility was demonstrated in the offspring in an inhalation developmental toxicity study with isopropylamine.

e. The prenatal developmental and reproduction studies with alkylbenzene sulfonates showed no qualitative or quantitative evidence of increased susceptibility. Slight changes in hematology and histopathology (both within historical control ranges) and slight decreases in body weight in the offspring at the highest dose of 250 mg/kg/day (at which there were no effects on the parental generation) were seen with alkylbenzenesulfonate in one reproduction study, however there were no effects in either the parents or offspring in the other two alkyl benzenesulfonate reproductive toxicity studies at the high dose tested of 70 mg/kg/day and 170 mg/kg/day, respectively. Since the selected point of departure of 50 mg/kg/day (mortality and clinical signs) for the dietary and inhalation risk assessments is protective of the offspring effects, there are no residual concerns.

f. No susceptibility was demonstrated in the offspring in dermal (rat and rabbit) and oral (rat) developmental toxicity studies with ethanolamine. Developmental toxicity was observed following oral exposure with ethanolamine at the same dose level where maternal toxicity was observed. Since a clear NOAEL of 120 mg/kg/day was identified for offspring effects, and the selected point of departure of 50 mg/

kg/day (mortality and clinical signs) for the dietary and inhalation risk assessments is protective of the offspring effects, there are no residual concerns.

g. No evidence of neurotoxicity was demonstrated in the database for alkylbenzene sulfonates, dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine and isopropylamine salt of dodecylbenzenesulfonic acid and thus there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

h. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100 PCT is assumed for all crops. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to ASABSA in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by ASABSA.

ii. *Diethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid.* EPA has determined that the FQPA SF should be retained. That decision is based on the following findings:

a. Although no increased susceptibility was demonstrated in the offspring in the available dermal studies in rats and rabbits following prenatal exposure to DEA, and the degree of concern is low for the increased qualitative susceptibility seen in the oral developmental toxicity study in rats, considering the limited data in the literature on DEA, which indicate a potential for developmental and/or reproductive and/or developmental neurotoxicity effects, the toxicology database for DEA is not considered adequate for assessing the sensitivity of infants and children to DEA when used as an inert ingredient (the available studies are described in Unit IV.D.2.).

b. There are no neurotoxicity studies available on DEA.

c. There are no reproductive toxicity studies available on DEA.

d. There are no developmental toxicity studies available on DEA that assess neurodevelopment.

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-, intermediate-, 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.* There was no hazard attributable to a single exposure seen in the toxicity database for ASABSA. Therefore, ASABSA are not expected to pose an acute risk.

2. *Chronic risk.* A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure, including the limitation of use of diethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid to not more than 7% of the pesticide product, the chronic dietary exposure from food and water to dimethylaminopropylamine, isopropylamine, ethanolamine and triethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid, is 23% of the cPAD for the U.S. population and 75% of the cPAD for children 1 to 2 years old, the most highly exposed population subgroup. The chronic dietary exposure from food and water to diethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid is 19% of the cPAD for the U.S. population and 56% of the cPAD for children 1 to 2 years old, the most highly exposed population subgroup.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

ASABSA are used as inert ingredients in pesticide products that are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to ASABSA. Using the exposure assumptions described in this unit, EPA has concluded that the combined short-

term aggregated food, water, and residential exposures result in aggregate MOEs of 220 and 260 for adult males and females, respectively. Adult residential exposure combines high end outdoor dermal and inhalation handler exposure with a high end post application dermal exposure from contact with treated lawns. EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 110 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

4. Intermediate-term risk.

Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

ASABSA are used as inert ingredients in pesticide products that are currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to ASABSA. Using the exposure assumptions described in this unit, EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in aggregate MOEs of 540 and 570 for adult males and females, respectively. Adult residential exposure includes high end post application dermal exposure from contact with treated lawns. EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 110 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to ASABSA.

6. *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 residues of ASABSA.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for ASABSA nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid when used as an inert ingredient in pesticide formulations applied to growing crops under 40 CFR 180.920 and to animals under 40 CFR 180.930 and to diethanolamine salts of alkyl (C₈-C₂₄) benzenesulfonic acid when used as an inert ingredient at levels not to exceed 7% by weight in pesticide formulations applied to growing crops under 40 CFR 180.920 and to animals under 40 CFR 180.930.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of 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 FFDCA, such as the exemptions 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 FFDCA. 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).

VIII. 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 30, 2009.
Lois Rossi,
Director, Registration Division, Office of Pesticide Programs.

Authority: 21 U.S.C. 321(q), 346a and 371.

■ Therefore, 40 CFR chapter I is amended as follows:

■ 2. In § 180.920, the table is amended by adding alphabetically the following inert ingredients:

PART 180—[AMENDED]

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

■ 1. The authority citation for part 180 continues to read as follows:

* * * * *

Inert Ingredients	Limits	Uses
Diethanolamine salts of alkyl (C ₈ -C ₂₄) benzenesulfonic acid (CAS Reg. Nos. 26545-53-9 and 68953-97-9).	Not to exceed 7% of pesticide formulation.	Surfactants, related adjuvants of surfactants
Dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C ₈ -C ₂₄) benzenesulfonic acid (CAS Reg. Nos. 26264-05-1, 27323-41-7, 55470-69-4, 68411-31-4, 68584-24-7, 68584-25-8, 68648-81-7, 68648-96-4, 68649-00-3, 68910-32-7, 68953-93-5, 90194-42-6, 90194-53-9, 90218-35-2, 157966-96-6, 319926-68-6, 877677-48-0, 1093628-27-3).		Surfactants, related adjuvants of surfactants

■ 3. In §180.930, the table is amended by adding alphabetically the following inert ingredients:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
Diethanolamine salts of alkyl (C ₈ -C ₂₄) benzenesulfonic acid (CAS Reg. Nos. 26545-53-9 and 68953-97-9).	Not to exceed 7% of pesticide formulation.	Surfactants, related adjuvants of surfactants
Dimethylaminopropylamine, isopropylamine, ethanolamine, and triethanolamine salts of alkyl (C ₈ -C ₂₄) benzenesulfonic acid (CAS Reg. Nos. 26264-05-1, 27323-41-7, 55470-69-4, 68411-31-4, 68584-24-7, 68584-25-8, 68648-81-7, 68648-96-4, 68649-00-3, 68910-32-7, 68953-93-5, 90194-42-6, 90194-53-9, 90218-35-2, 157966-96-6, 319926-68-6, 877677-48-0, 1093628-27-3).		Surfactants, related adjuvants of surfactants

[FR Doc. E9-18698 Filed 8-4-09; 8:45 am]
BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2009-0145; FRL-8430-1]

Alkyl Alcohol Alkoxyates; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for [residues] of α -alkyl- ω -hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons when used as an inert ingredient in pesticide formulations. The Joint Inerts Task Force (JITF),

Cluster Support Team Number 1, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of α -alkyl- ω -hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons.

DATES: This regulation is effective August 5, 2009. Objections and requests for hearings must be received on or before October 5, 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-2009-0145. 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: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8811; e-mail address: leifer.kerry@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>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

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-2009-0145 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 October 5, 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-2009-0145, 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. Background

In the **Federal Register** of April 15, 2009 (74 FR 17487) (FRL-8409-7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP [9E7534]) filed by The Joint Inerts Task Force, Cluster Support Team 1 (CST 1), c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910, 40 CFR 180.930, 40 CFR 180.940a, and 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of a group of substances known as α -alkyl- ω -hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of 6 carbons, herein referred to in this document as AAA. AAAs are used as inert ingredients in pesticide products. That notice referenced a summary of the petition prepared by The Joint Inerts

Task Force (JITF), Cluster Support Team Number 1 (CST 1)], the petitioner, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

This petition was submitted in response to a final rule of August 9, 2006, (71 FR 45415) in which the Agency revoked, under section 408(e)(1) of the Federal Food, Drug, and Cosmetic Act (FFDCA), the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by FFDCA section 408(b)(2). The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009 by a final rule published in the **Federal Register** of August 4, 2008 (73 FR 45312) to allow for data to be submitted to support the establishment of tolerance exemptions for these inert ingredients prior to the effective date of the tolerance exemption revocation.

Depending on the degree of alkoxylation, each of the AAA substances included in the petition can vary in number average molecular weight from a range of approximately 260 to 4,000. In the case where the minimum number average molecular weight of an AAA is 1,100 or more, the petitioner's basis of support for the establishment of an exemption from the requirement of a tolerance under 40 CFR 180.960 is the fact that such high molecular weight AAAs would meet the criteria for a low-risk polymer as defined in 40 CFR 723.250. For the remaining AAAs (i.e., the ones with molecular weights between 260 and 1,100), the petition seeks to establish tolerance exemptions for all AAAs under 40 CFR 180.910, 40 CFR 180.930, and 40 CFR 180.940(a). Therefore, in its consideration of the petition the Agency has conducted an assessment specific to the establishment of an exemption from the requirement of a tolerance for the lower weight AAAs under 40 CFR 180.910, 40 CFR 180.930, and 40 CFR 180.940(a) as well as an assessment specific to the establishment of an exemption from the requirement of a tolerance under 40 CFR 180.960 for the "high molecular weight" AAAs.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and

hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

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 exemption from the requirement of a tolerance for residue of AAAs when used as an inert ingredient in pesticide formulations applied pre- and post-harvest, applied to livestock, and used in antimicrobial formulations, and as a

low risk polymer as defined in 40 CFR 723.250. 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.

1. *For lower weight AAAs under 40 CFR 180.910, 40 CFR 180.930, and 40 CFR 180.940a.* The available toxicology database includes acute studies, subchronic (rat and dog) studies, a mutagenicity study, three OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity studies with the reproduction/developmental toxicity screening tests, an OPPTS Harmonized Guideline 870.3550 reproduction/developmental toxicity screening test, an OPPTS harmonized Test Guideline 870.3800 reproduction and fertility effects study, and reproduction and developmental effects studies.

The AAAs are not acutely toxic by the oral and dermal routes of exposure under normal use conditions. Concentrated materials are generally moderate to severe eye and skin irritants and may be skin sensitizers. There is no evidence of mutagenicity in the Ames assay (bacterial strains).

Following subchronic exposure to rats and dogs, decreases in body weight and food consumption were observed, but no specific target organ toxicity or neurotoxicity was seen. No effects were detected in a functional observational battery (FOB) or motor activity assessment. In a 90-day dermal toxicity study with AAA surfactant, no systemic toxicity was observed at doses up to 125 mg/kg/day (the highest dose tested). In an OPPTS Harmonized Guideline 870.3650 study with the AAA surfactant CAS No. 9004-98-2, parental toxicity observed at 110 mg/kg/day included decreased absolute and relative thymus weight, decreased body weight gain and decreased food consumption in females, and clinical signs in both sexes. These clinical signs are indicative of local irritation effects rather than systemic effects and thus were not used as a basis for evaluating the safety of the AAA surfactants. No reproductive or developmental/offspring toxicity was observed. In the second OPPTS Harmonized Guideline 870.3650 study with the AAA surfactant CAS 103818-

93-5, parental systemic toxicity was observed at 300 mg/kg/day (HDT), based on decreased body weight gain (in males) and clinical signs (orange/red perioral staining and moderate salivation) in both sexes. No reproductive or developmental/offspring toxicity was observed. In the third OPPTS Harmonized Guideline 870.3650 study with the AAA surfactant CAS RN 64366-70-7, parental systemic toxicity was observed at 500 mg/kg/day (HDT), based on decreased body weight in males. No reproductive or developmental/offspring toxicity was observed.

In an OPPTS Harmonized Test Guideline 870.3550 reproduction/developmental toxicity screening test with the AAA surfactant CAS No. 84133-50-6, parental toxicity was observed at 470 mg/kg/day based on clinical signs (ptosis and hypoactivity), decreased absolute body weight, body weight gain, and food consumption. Reproductive toxicity was observed, as evidenced by the microscopic changes in the testes and epididymides (testicular atrophy, increased intraluminal exfoliated spermatogenic cells in epididymides, and dilated seminiferous tubules). Developmental/offspring toxicity was observed at 470 mg/kg/day (the highest dose tested), based on decreased litter size and increased postimplantation loss.

In a reproduction and developmental effects study with the AAA surfactant CAS 68951-67-7, the only significant effects observed in female rats were decreased body weight and body weight gain during premating at 400.8 mg/kg/day. At this maternally toxic dose, offspring toxicity observed was decreased body weight on lactation day (LD) 21 (both sexes in F_{1A}, F_{1B}, F_{2A}, and F_{2B}). No treatment-related effects were observed on reproductive parameters.

In an OPPTS Harmonized Test Guideline 870.3800 reproduction and fertility effects study with AAA surfactant CAS 68951-67-7, clinical signs observed at 250 mg/kg/day were increased incidences of lachrymation, incidences of unkemptness, hunched posture, chromodacryorrhea and periocular swelling in F₀ and F₁ females. These effects may be attributed to local irritant effects. No treatment-related effects were observed on reproduction or the offspring at 250 mg/kg/day (HDT).

It is generally accepted that increased ethoxylation decreases lipophilicity resulting in decreased absorption and decreased toxicity. The lower molecular weight AAAs would be expected to be absorbed and distributed more readily than higher molecular weight AAAs and

therefore to potentially be more toxic. The representative ethoxylated compounds tested have the lowest weight percent ethoxylation and lowest molecular weight of the series and are potentially the most bioavailable of the series. Although metabolism data are not available, the major metabolic pathway for AAA surfactants is expected to include the hydrolysis of ether linkage to the corresponding alkyl alcohol and polyalkoxylate (POE or POE/POP) group which subsequently undergoes oxidative degradation and/or excretion.

There is no evidence that the AAA surfactants are carcinogenic. The Agency used a qualitative structure activity relationship (SAR) database, DEREK Version 11, to determine if there were structural alerts. No structural alerts were identified. In addition, there was little concern about any of the postulated metabolites having greater toxicity than the parent compounds.

Specific information on the studies received and the nature of the adverse effects caused by AAA, 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 document Alkyl Alcohol Alkoxylates (AAA - JITF CST 1 Inert Ingredient). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations at pp 13–20 and pp 61–75 in docket ID number EPA–HQ–OPP–2009–0145.

2. *For the high molecular weight AAAs under 40 CFR 180.960.* In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). The high molecular weight AAAs conform to the definition of a polymer given in 40 CFR 723.250(b) and

meet the following criteria that are used to identify low-risk polymers.

i. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

ii. The polymer does not contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

iii. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

iv. The polymer is neither designed nor can it be reasonably anticipated to be substantially degrade, decompose, or depolymerize.

v. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

vi. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymers also meet as required the following exemption criteria specified in 40 CFR 723.250(e).

The polymer's number average MW of 1,100 daltons is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, the high molecular weight AAAs meet the criteria for a polymer to be considered low risk under 40 CFR 723.250. Generally, polymers of this size would be poorly absorbed by all routes of exposure, including through the intact gastrointestinal tract or through intact human skin, and therefore, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to the high molecular weight AAAs.

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-, intermediate-, 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>.

1. *For the lower weight AAAs under 40 CFR 180.910, 40 CFR 180.930, and 40 CFR 180.940a.* A summary of the toxicological endpoints for the AAAs used for human health risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THE AAAs FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)	No appropriate endpoint was identified for acute dietary assessment.		

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THE AAAs FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Chronic dietary (all populations)	NOAEL= 168 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x	Chronic RfD = 1.68 mg/kg/day cPAD = 1.68 mg/kg/day	OPPTS harmonized Test Guideline 870.3550 reproduction/developmental toxicity screening test MRID 47676801 (2009) LOAEL = 470 mg/kg/day based on one maternal death (GD 22), decreased body weight, body weight gain, and food consumption, increased clinical signs (ptosis and hypoactivity), and microscopic changes of the testes and epididymides (testicular atrophy, increased intraluminal exfoliated spermatogenic cells in epididymides, and dilated seminiferous tubules) in parental animals, decreased litter size, and increased postimplantation loss.
Incidental Oral and Inhalation (all durations)	NOAEL= 168 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x	Residential LOC for MOE = 100	OPPTS harmonized Test Guideline 870.3550 reproduction/developmental toxicity screening test MRID 47676801 (2009) LOAEL = 470 mg/kg/day based on one maternal death (GD 22), decreased body weight, body weight gain, and food consumption, increased clinical signs (ptosis and hypoactivity), and microscopic changes of the testes and epididymides (testicular atrophy, increased intraluminal exfoliated spermatogenic cells in epididymides, and dilated seminiferous tubules) in parental animals, decreased litter size, and increased postimplantation loss.
Dermal (all durations)	NOAEL= 168 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x	Residential LOC for MOE = 100	OPPTS harmonized Test Guideline 870.3550 reproduction/developmental toxicity screening test MRID 47676801 (2009) Oral LOAEL = 470 mg/kg/day based on one maternal death (GD 22), decreased body weight, body weight gain, and food consumption, increased clinical signs (ptosis and hypoactivity), and microscopic changes of the testes and epididymides (testicular atrophy, increased intraluminal exfoliated spermatogenic cells in epididymides, and dilated seminiferous tubules) in parental animals, decreased litter size, and increased postimplantation loss. The final dose used to quantify dermal risk must correct for 50% dermal absorption, and should be multiplied by 3 to take into account the differences in rat and human skin penetration. The resulting dose = 1,000 mg/kg/day
Cancer (oral, dermal, inhalation)	Classification: Based on SAR analysis, AAA surfactants are not expected to be carcinogenic.		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). PAD = population adjusted dose (a=acute, c=chronic). FQPA SF = FQPA Safety Factor. RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable.

2. For the high molecular weight AAAs under 40 CFR 180.960. Since the high molecular weight AAAs conform to the criteria that identify a low risk polymer, and are not likely to be absorbed significantly by any route of exposure, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Thus, due to their low potential hazard, it was determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate for the high molecular weight AAAs, and an exposure assessment is not necessary. For the same reason, an additional safety factor to protect infants and children is not needed.

C. Exposure Assessment

Sufficient data were provided on the chemical identity of the AAAs; however, limited data are available on the metabolism and environmental degradation of these compounds. The Agency relied collectively on information provided on the representative chemical structures, the submitted physicochemical data, structure-activity relationship information, as well as information on other surfactants and chemicals of similar size and functionality to determine the residues of concern for these inert ingredients. The Agency has concluded that a risk assessment based on toxicity data for the parent compounds is not likely to underestimate risk.

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to the lower weight AAAs,

EPA considered exposure under the petitioned-for exemptions from the requirement of a tolerance. EPA assessed dietary exposures from the lower weight AAAs in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of the AAAs was seen in the toxicity databases. Therefore, acute dietary risk assessments for the AAAs are not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for the AAAs. In the absence of specific residue data, EPA has developed an approach which uses surrogate

information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled *Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts*. (D361707, S. Piper, 2/25/09) and can be found at <http://www.regulations.gov> in docket ID number EPA-HQ-OPP-2008-0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products is generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at

the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer*. The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. The AAAs are not expected to be carcinogenic. Therefore, a cancer dietary exposure assessment is not necessary to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for the AAAs. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for the AAAs in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of the AAAs. Further information regarding EPA drinking water models used in the pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

A screening level drinking water analysis, based on the Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of the AAAs. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of the AAAs were

conducted. Modeled acute drinking water values ranged from 0.001 ppb to 41 ppb. Modeled chronic drinking water values ranged from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at <http://www.regulations.gov> in the document *Alkyl Alcohol Alkoxylates (AAA - JITF CST 1 Inert Ingredient). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations* at pp 20–21 and 77–79 in docket ID number EPA-HQ-OPP-2009-0145.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for the AAAs, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for chronic dietary risk assessments for the parent compound. These values were directly entered into the dietary exposure model.

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). The AAAs may be used in inert ingredients in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. A screening level residential exposure and risk assessment was completed for products containing the AAAs as inert ingredients. In this assessment, representative scenarios, based on end-use product application methods and labeled application rates, were selected. The AAAs may be used as inert ingredients in pesticide formulations that are used in and around the home. Additionally, these inerts may be used in pesticide products applied to pets as aerosol sprays intended for flea control on carpeted surfaces and bedding, or in shampoo products applied to pets. Lastly, these inerts may be present in home cleaning products or paint products. For each of the use scenarios, the Agency assessed residential handler (applicator) inhalation and dermal exposure for use scenarios with high exposure potential (i.e., exposure scenarios with high-end unit exposure values) to serve as a screening assessment for all potential residential pesticides containing the AAAs. Similarly, the Agency conducted an assessment to represent worst-case residential exposure by assessing post application exposures and risks from AAAs in pesticide formulations

(outdoor scenarios), AAAs in disinfectant-type uses (indoor scenarios), AAAs in shampoo pet treatments (pet product scenarios) and AAAs in paint products (paint product scenarios). Further details of this residential exposure and risk analysis can be found at <http://www.regulations.gov> in the memorandum entitled *JITF Inert Ingredients Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations* (D364751, 5/7/09, Lloyd/LaMay in docket ID number EPA-HQ-OPP-2008-0710).

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 AAAs to share a common mechanism of toxicity with any other substances, and the AAAs do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the AAAs do 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.* In the case of the lower weight AAA surfactants, there was no evidence of increased susceptibility to the offspring of rats following prenatal and postnatal exposure in the reproductive/developmental screening studies on several representative AAA surfactants. Decreased litter size and increased postimplantation loss were observed in one OPPTS Harmonized Guideline 870.3550 reproduction/developmental toxicity screening study at 470 mg/kg/day where maternal/paternal toxicity was manifested as one maternal death (GD 22), decreased body weight, body-weight gain and food consumption and clinical signs (ptosis and hypoactivity) and microscopic changes in the testes (atrophy) and epididymides (increased intraluminal exfoliated spermatogenic cells) and dilated seminiferous tubules at the same dose (470 mg/kg/day). The maternal and offspring toxicity NOAEL was 168 mg/kg/day. The offspring toxicity in the OPPTS Harmonized Test Guideline 870.3650 study was manifested in the presence of more severe maternal toxicity (deaths), therefore, EPA concluded that there is no evidence of increased susceptibility in this study. In addition, there was no evidence of increased susceptibility in other submitted studies.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for the lower weight AAAs. (As discussed earlier, given the low toxicological concerns with the high weight AAAs, a safety factor analysis is unnecessary). That decision as to the lower weight AAAs is based on the following findings:

i. The toxicity database for the AAAs is considered adequate for assessing the risks to infants and children. The toxicity database consists of three OPPTS Harmonized Test Guideline 870.3650 combined repeated dose toxicity studies with the reproduction/developmental toxicity screening tests, an OPPTS Harmonized Test Guideline 870.3550 reproduction/developmental toxicity screening test study, an OPPTS Harmonized Test Guideline 870.3800 reproduction and fertility effects study, and reproduction and developmental effects studies. The Agency noted changes in thymus weight. However, the thymus/lymph node effects are considered secondary effects caused by an overall stress response to the irritant properties of this chemical, and therefore, not an immunological response. In addition, no blood parameters were affected in the database. Furthermore, these

compounds do not belong to a class of chemicals that would be expected to be immunotoxic. Also, in an OPPTS Harmonized Test Guideline 870.3550 study, testicular effects, such as, testicular atrophy, microscopic changes in the testes, epididymides and dilated seminiferous tubules were observed in male rats at the highest dose tested (470 mg/kg/day). However, none of the reproductive parameters (pregnancy rate) were affected in this study. In addition, there were no effects observed on reproductive parameters in the OPPTS Harmonized Test Guideline 870.3800 reproduction and fertility effects study. Furthermore, there was no histological findings in the testes in that study. Based on the weight of the evidence for immunotoxicity and reproductive toxicity, there is no need to add additional uncertainty factors.

ii. EPA concluded that there is no evidence of qualitative or quantitative increased susceptibility in the available database. Therefore, there is no concern for increased susceptibility to infants and children.

iii. There is no indication that the AAAs are neurotoxic chemicals and thus there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iv. Although the chronic point of departure was selected from a subchronic study, longer-term studies are available that support the NOAEL selected. No additional uncertainty factor is needed for extrapolating from subchronic to chronic exposure.

v. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100% crop treated is assumed for all crops. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to the AAAs in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by the AAAs.

E. Aggregate Risks and Determination of Safety

1. *For the lower weight AAAs under 40 CFR 180.910, 40 CFR 180.930, and 40 CFR 180.940a.* 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-, intermediate-, 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.

i. *Acute risk.* There was no hazard attributable to a single exposure seen in the toxicity database for the AAAs. Therefore, the AAAs are not expected to pose an acute risk.

ii. *Chronic risk.* A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure the chronic dietary exposure from food and water to the AAAs is 11% of the cPAD for the U.S.

population and 37% of the cPAD for children 1 to 2 years old, the most highly exposed population subgroup.

iii. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

AAAs are used as inert ingredients in pesticide products that are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to the AAAs. EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in aggregate MOEs of 110 for both adult males and females. Adult residential exposure combines high end indoor inhalation handler exposure with a high-end post application to pet exposures. EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 110 for children. Children's residential exposure includes total combined pet exposures. As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

iv. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term

residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

The AAAs are used as inert ingredients in pesticide products that are currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to the AAAs. EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in aggregate MOEs of 230 for both adult males and females, respectively. Adult residential exposure includes high-end post application dermal exposure from contact with treated pets. EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 110 for children. Children's residential exposure includes total combined pet exposure. As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

v. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to the AAAs.

vi. *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 residues of the lower weight AAAs.

2. *For the high molecular weight AAAs under 40 CFR 180.960.* Since AAA conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Therefore, 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 residues of the high molecular weight AAAs.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for the AAAs nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of the lower molecular weight α -alkyl- ω -hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of 6 carbons when used as an inert ingredient in pesticide formulations applied pre- and post-harvest, applied to livestock, and used in antimicrobial formulations under 40 CFR 180.910, 40 CFR 180.930, and 40 CFR 180.940(a). In addition, an exemption from the requirement of a tolerance is established for residues of the larger molecular weight compounds of α -alkyl- ω -hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of 6 carbons under 40 CFR 180.960.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of 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 FFDCA, such as the exemptions 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 FFDCA. 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).

VIII. 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 29, 2009.

Lois Rossi,

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. In § 180.910, the table is amended by adding alphabetically the following inert ingredients:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	*	*
<p>α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons (CAS Reg. Nos. 9002-92-0, 9004-95-9, 9005-00-9, 26183-52-8, 34398-01-1, 52292-17-8, 66455-14-9, 66455-15-0, 68002-97-1, 68131-39-5, 68131-40-8, 68154-96-1, 68213-23-0, 68439-45-2, 68439-46-3, 68526-94-3, 68439-50-9, 68439-49-6, 68551-12-2, 68951-67-7, 71243-46-4, 97043-91-9, 9043-30-5, 60828-78-6, 61827-42-7, 24938-91-8, 68439-54-3, 69011-36-5, 78330-20-8, 78330-21-9, 106232-83-1, 127036-24-2, 160875-66-1, 9004-98-2, 68920-66-1, 61804-34-0, 61791-28-4, 71060-57-6, 26468-86-0, 31726-34-8, 52609-19-5, 61791-20-6, 68155-01-1, 69013-19-0, 69364-63-2, 70879-83-3, 78330-19-5, 97953-22-5, 157627-86-6, 34398-05-5, 72905-87-4, 84133-50-6, 61702-78-1, 27306-79-2, 169107-21-5, 61791-13-7, 39587-22-9, 85422-93-1, 68154-98-3, 61725-89-1, 68002-96-0, 68154-97-2, 68439-51-0, 68551-13-3, 68603-25-8, 68937-66-6, 68987-81-5, 69227-21-0, 70750-27-5, 103818-93-5, 166736-08-9, 120313-48-6, 68213-24-1, 68458-88-8, 68551-14-4, 69013-18-9, 69227-22-1, 72854-13-8, 73049-34-0, 78330-23-1, 37311-02-7, 64366-70-7, 37251-67-5, 9087-53-0, 196823-11-7, 57679-21-7, 111905-54-5, 61827-84-7, 172588-43-1)</p>	*	<p>Surfactants, related adjuvants of surfactants</p>
* * * * *	*	*

■ 3. In §180.930, the table is amended by adding alphabetically the following inert ingredients:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
<p>* * * * *</p> <p>α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons (CAS Reg. Nos. 9002-92-0, 9004-95-9, 9005-00-9, 26183-52-8, 34398-01-1, 52292-17-8, 66455-14-9, 66455-15-0, 68002-97-1, 68131-39-5, 68131-40-8, 68154-96-1, 68213-23-0, 68439-45-2, 68439-46-3, 68526-94-3, 68439-50-9, 68439-49-6, 68551-12-2, 68951-67-7, 71243-46-4, 97043-91-9, 9043-30-5, 60828-78-6, 61827-42-7, 24938-91-8, 68439-54-3, 69011-36-5, 78330-20-8, 78330-21-9, 106232-83-1, 127036-24-2, 160875-66-1, 9004-98-2, 68920-66-1, 61804-34-0, 61791-28-4, 71060-57-6, 26468-86-0, 31726-34-8, 52609-19-5, 61791-20-6, 68155-01-1, 69013-19-0, 69364-63-2, 70879-83-3, 78330-19-5, 97953-22-5, 157627-86-6, 34398-05-5, 72905-87-4, 84133-50-6, 61702-78-1, 27306-79-2, 169107-21-5, 61791-13-7, 39587-22-9, 85422-93-1; 68154-98-3, 61725-89-1, 68002-96-0, 68154-97-2, 68439-51-0, 68551-13-3, 68603-25-8, 68937-66-6, 68987-81-5, 69227-21-0, 70750-27-5, 103818-93-5, 166736-08-9, 120313-48-6, 68213-24-1, 68458-88-8, 68551-14-4, 69013-18-9, 69227-22-1, 72854-13-8, 73049-34-0, 78330-23-1, 37311-02-7, 64366-70-7, 37251-67-5, 9087-53-0, 196823-11-7, 57679-21-7, 111905-54-5, 61827-84-7, 172588-43-1)</p> <p>* * * * *</p>	<p>*</p> <p>*</p>	<p>* Surfactants, related adjuvants of surfactants</p>

■ 4. Section §180.940 is amended by alphabetically adding the following entry to the table in paragraph (a):

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

(a) * * *

* * * * *

Pesticide Chemical	CAS Reg. No.	Limits
<p>* * * * *</p> <p>α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons.</p> <p>* * * * *</p>	<p>* * * * *</p> <p>9002-92-0, 9004-95-9, 9005-00-9, 26183-52-8, 34398-01-1, 52292-17-8, 66455-14-9, 66455-15-0, 68002-97-1, 68131-39-5, 68131-40-8, 68154-96-1, 68213-23-0, 68439-45-2, 68439-46-3, 68526-94-3, 68439-50-9, 68439-49-6, 68551-12-2, 68951-67-7, 71243-46-4, 97043-91-9, 9043-30-5, 60828-78-6, 61827-42-7, 24938-91-8, 68439-54-3, 69011-36-5, 78330-20-8, 78330-21-9, 106232-83-1, 127036-24-2, 160875-66-1, 9004-98-2, 68920-66-1, 61804-34-0, 61791-28-4, 71060-57-6, 26468-86-0, 31726-34-8, 52609-19-5, 61791-20-6, 68155-01-1, 69013-19-0, 69364-63-2, 70879-83-3, 78330-19-5, 97953-22-5, 157627-86-6, 34398-05-5, 72905-87-4, 84133-50-6, 61702-78-1, 27306-79-2, 169107-21-5, 61791-13-7, 39587-22-9, 85422-93-1; 68154-98-3, 61725-89-1, 68002-96-0, 68154-97-2, 68439-51-0, 68551-13-3, 68603-25-8, 68937-66-6, 68987-81-5, 69227-21-0, 70750-27-5, 103818-93-5, 166736-08-9, 120313-48-6, 68213-24-1, 68458-88-8, 68551-14-4, 69013-18-9, 69227-22-1, 72854-13-8, 73049-34-0, 78330-23-1, 37311-02-7, 64366-70-7, 37251-67-5, 9087-53-0, 196823-11-7, 57679-21-7, 111905-54-5, 61827-84-7, 172588-43-1)</p> <p>* * * * *</p>	<p>*</p>

■ 5. In §180.960, the table is amended by adding alphabetically the following polymers:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
<p>* * * * *</p> <p>α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons, minimum number average molecular weight (in amu) 1,100.</p>	<p>* * * * *</p> <p>9002-92-0, 9004-95-9, 9005-00-9, 26183-52-8, 34398-01-1, 52292-17-8, 66455-14-9, 66455-15-0, 68002-97-1, 68131-39-5, 68131-40-8, 68154-96-1, 68213-23-0, 68439-45-2, 68439-46-3, 68526-94-3, 68439-50-9, 68439-49-6, 68551-12-2, 68951-67-7, 71243-46-4, 97043-91-9, 9043-30-5, 60828-78-6, 61827-42-7, 24938-91-8, 68439-54-3, 69011-36-5, 78330-20-8, 78330-21-9, 106232-83-1, 127036-24-2, 160875-66-1, 9004-98-2, 68920-66-1, 61804-34-0, 61791-28-4, 71060-57-6, 26468-86-0, 31726-34-8, 52609-19-5, 61791-20-6, 68155-01-1, 69013-19-0, 69364-63-2, 70879-83-3, 78330-19-5, 97953-22-5, 157627-86-6, 34398-05-5, 72905-87-4, 84133-50-6, 61702-78-1, 27306-79-2, 169107-21-5, 61791-13-7, 39587-22-9, 85422-93-1; 68154-98-3, 61725-89-1, 68002-96-0, 68154-97-2, 68439-51-0, 68551-13-3, 68603-25-8, 68937-66-6, 68987-81-5, 69227-21-0, 70750-27-5, 103818-93-5, 166736-08-9, 120313-48-6, 68213-24-1, 68458-88-8, 68551-14-4, 69013-18-9, 69227-22-1, 72854-13-8, 73049-34-0, 78330-23-1, 37311-02-7, 64366-70-7, 37251-67-5, 9087-53-0, 196823-11-7, 57679-21-7, 111905-54-5, 61827-84-7, 172588-43-1</p> <p>* * * * *</p>

[FR Doc. E9-18706 Filed 8-4-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0944; FRL-8429-4]

Polyoxyethylene polyoxypropylene mono(di-sec-butylphenyl) ether; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of Polyoxyethylene polyoxypropylene mono(di-sec-butylphenyl) ether when used as an inert ingredient in herbicide formulations only, for pre-harvest uses and at no more than 30% by weight in herbicide formulations intended for application to turf. The Joint Inerts Task Force (JITF), Cluster Support Team Number 20, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of Polyoxyethylene polyoxypropylene mono(di-sec-butylphenyl) ether.

DATES: This regulation is effective August 5, 2009. Objections and requests for hearings must be received on or before October 5, 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-2008-0944. 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:

Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8811; e-mail address: leifer.kerry@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>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

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-2008-0944 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 October 5, 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-2008-0944, 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. Background

In the **Federal Register** of March 25, 2009 (74 FR 12856) (FRL-8399-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7494) by The Joint Inerts Task Force (JITF), Cluster Support Team 20 (CST 20), c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.920 be amended by establishing exemptions from the requirement of a tolerance for residues of the inert ingredient

Polyoxyethylene polyoxypropylene mono(di-sec-butylphenyl) ether, herein referred to in this document as POE/POP mono(di-sec-butylphenyl) ether, when used as an inert ingredient in herbicide formulations for pre-harvest uses under 40 CFR 180.920. That notice referenced a summary of the petition prepared by The JITF, CST 20, the petitioner, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the exemption requested by limiting POE/POP mono(di-sec-butylphenyl) to a maximum of 30% by weight in the herbicide formulations intended for application to turf. This limitation is based on the Agency's risk assessment which can be found at <http://www.regulations.gov> in document *Polyoxyethylene Polyoxypropylene Mono(di-sec-Butylphenyl) Ether (JITF CST 20 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations* in docket ID number EPA-HQ-OPP-2008-0944.

This petition was submitted in response to a final rule of August 9, 2006, (71 FR 45415) in which the Agency revoked, under section 408(e)(1) of the Federal Food, Drug, and Cosmetic Act (FFDCA), the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by FFDCA section 408(b)(2). The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009 by a final rule published in the **Federal Register** of August 4, 2008 (73 FR 45312) to allow for data to be submitted to support the establishment of tolerance exemptions for these inert ingredients prior to the effective date of the tolerance exemption revocation.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose;

wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

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 exemption from the requirement of a tolerance for residue of POE/POP mono(di-sec-butylphenyl) ether when used as an inert ingredient in herbicide formulations only, for pre-harvest uses, and provided that uses in herbicide formulations intended for turf application are limited to no more than 30% by weight in the final formulation. 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.

The available mammalian toxicology database consists of one combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats for the representative POE/POP mono(di-sec-butylphenyl) ether, three subchronic oral toxicity studies (rats and dogs), and acute data on representative POE/POP mono(di-sec-butylphenyl) ether inert.

The POE/POP mono(di-sec-butylphenyl) ether inert ingredients are not acutely toxic by the oral, dermal and inhalation routes of exposure and are slight to severe eye irritants and not a skin irritant.

The OPPTS Harmonized Guideline 870.3650 *Combined Repeated Dose Toxicity Study* with rats demonstrated that the representative POE/POP mono(di-sec-butylphenyl) ether had no effect on food consumption, body weight gain, and FOB parameters in males and females at any of the doses tested. Blood coagulation in male and female rats in the highest dose group as measured by prothrombin time, was significantly reduced. Microscopic effects observed included minimal or mild centrilobular hepatocellular hypertrophy which was seen in the liver of 4 of 5 male rats and 3 of 5 female rats in the 304 milligrams/kilogram/day (mg/kg/day) dose group. In the affected livers, centrilobular areas were more prominent due to enlarged (hypertrophied) hepatocytes with an increased amount of dense granular eosinophilic cytoplasm. As hepatocellular hypertrophy was not accompanied by inflammatory or degenerative changes, this finding was considered to be adaptive in nature, in response to metabolizing the test substance, and not adverse. An increased incidence of thyroid follicular epithelial hypertrophy and hyperplasia was observed in all male rats in the 304 mg/kg/day dose group. This follicular change was characterized by increased size of follicular epithelial cells (hypertrophy) and, in some areas, there were increased amounts of small follicles and increased cells within the follicles (hyperplasia). Thyroid

hormones were not measured in this study. It is possible that the thyroid changes were due to an indirect effect by increased metabolism of thyroid hormones by the liver. No treatment related effects were observed on litter sizes or on the early development of pups.

In a 90-day oral toxicity study performed in rats (MRID 46610818), Polyglycol 26-2 was administered to male and female rats at dose levels of 0, 5, 15, 50, 150, and 500 mg/kg/day. The no-observed-effect-level (NOAEL) was determined to be 50 mg/kg/day, and the lowest-observed-effect-level (LOAEL) was determined to be 150 mg/kg/day based up lesions in the liver and kidney of both sexes.

In a 90-day Oral Toxicity Study performed in Beagle dogs (MRID 46610819), Polyglycol 26-2 was administered orally at 0, 3, 10, 36, and 92 mg/kg/day. No evidence of adverse effects was observed at any of the doses in this study.

A similar study in Beagle dogs was carried out for Polyglycol 26-3 (MRID 46610820). No adverse effects were noted at doses up to 100 mg/kg/day (the highest dose tested). The study was classified as Acceptable/non-guideline.

There are no published metabolism studies for this series of surfactants. The mammalian metabolism pathway proposed in the petition is based on the polyalkoxylate metabolism of alkyl alcohols documented in publicly available literature. By analogy to the polyethoxylated surfactants, the significant metabolic pathway could be hydrolytic or oxidative removal of the polyalkoxylate chains to generate an isomeric mixture of di-sec butyl phenol and the polypropoxylate polyethoxylate alcohol that may be further oxidized.

The proposed polypropoxylates and polyethoxylates, alcohols and carboxylic acids, should be rapidly

excreted as conjugates. The liver, lungs and gastrointestinal tract are the most important sites for phenol metabolism with excretion proceeding rapidly through conjugation to generate phenyl glucuronide and phenyl sulfate. The di-sec butyl side chains may or may not be degraded but depending on their position on the phenol, because of steric hindrance, may slow down conjugation and conjugation of the phenolic polymeric component.

There are no chronic toxicity studies available for POE/POP mono(di-sec-butylphenyl) ether. The Agency used a qualitative structure activity relationship (SAR) database, DEREK Version 11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts were identified.

Specific information on the studies received and the nature of the adverse effects caused by POE/POP mono(di-sec-butylphenyl) ether, as well as, the NOAEL and the LOAEL from the toxicity studies can be found at <http://www.regulations.gov> in document *Polyoxyethylene Polyoxypropylene Mono(di-sec-Butylphenyl) Ether (JITF CST 20 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations* at pp 9-14 and pp 42-47 in docket ID number EPA-HQ-OPP-2008-0944.

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-, intermediate-, 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 POE/POP mono(di-sec-butylphenyl) ether used for human health risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR POE/POP MONO(DI-SEC-BUTYLPHENYL) ETHER FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)	An effect attributable to a single exposure was not identified.		

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR POE/POP MONO(DI-SEC-BUTYLPHENYL) ETHER FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Chronic dietary (all populations)	NOAEL= 82 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x	Chronic RfD = 0.82 mg/kg/day cPAD = 0.82 mg/kg/day	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test-Rat OPPTS Harmonized Guideline 870.3650 Parental LOAEL = 304 mg/kg bw/day based on clinical signs in male and female rats (salivation), increased incidence of thyroid follicular epithelial hypertrophy and hyperplasia in male rats, reduction of prothrombin time in male and female rats, and reduction of activated partial thromboplastin time in female rats. Reproductive/Developmental LOAEL was not observed.
Incidental Oral, Dermal, and Inhalation (Short-, Intermediate-, and Long-Term)	NOAEL= 82 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x 50% dermal absorption; inhalation toxicity is assumed to be equivalent to oral toxicity.	Residential LOC for MOE = 100.	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test-Rat OPPTS Harmonized Guideline 870.3650 Parental LOAEL = 304 mg/kg bw/day based on clinical signs in male and female rats, increased incidence of thyroid follicular epithelial hypertrophy and hyperplasia in male rats, reduction of prothrombin time in male and female rats, and reduction of activated partial thromboplastin time in female rats. Reproductive/ Developmental LOAEL was not observed.
Cancer (oral, dermal, inhalation)	Classification: No animal toxicity data available for an assessment. Based on SAR analysis, POE/POP mono(di-sec-butylphenyl) ether is not expected to be carcinogenic.		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). PAD = population adjusted dose (a=acute, c=chronic). FQPA SF = FQPA Safety Factor. RfD = reference dose. LOC = level of concern.

C. Exposure Assessment

Sufficient data were provided on the chemical identity of the POE/POP mono(di-sec-butylphenyl) ether inert ingredients; however, limited data are available on the metabolism and environmental degradation of these compounds. The Agency relied collectively on information provided on the representative chemical structures, the generic cluster structures, the modeled physicochemical information, as well as the structure-activity relationship information. Additionally, information on other surfactants and chemicals of similar size and functionality was considered to determine the residues of concern for these inert ingredients.

The registrant selected Polyglycol 26-2 (CAS RN 69029-39-6), a complex mixture of polyethoxylated/polypropoxylated, POE/POP, ethers of a mixture of the three different isomeric di-sec-butyl phenols, for toxicity testing. The Agency has concluded that the cluster grouping was appropriate. Based

on the chemical structure, it is likely that the parent compound will degrade in the environment to 2,4-di-sec-butyl phenol, and 2,6-di-sec-butyl phenol. The Agency considered the SAR analysis, and information in the literature, and concluded that the butylphenols are not likely to be more toxic than the parent compounds. Considering the high residue approach to the dietary risk assessment that basically assumes no degradation of the parent and 100% CT, and the fact that the two degradates are not likely to be more toxic than the parent, the parent compound risk assessment is protective of any potential toxicity effects of the butylphenols. Therefore, it is not necessary to assess the exposure to the butylphenols separately.

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to POE/POP mono(di-sec-butylphenyl) ether, EPA considered exposure under the petitioned-for exemptions from the requirement of a tolerance. EPA assessed dietary

exposures from POE/POP mono(di-sec-butylphenyl) ether in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of POE/POP mono(di-sec-butylphenyl) ether was seen in the toxicity databases. Therefore, acute dietary risk assessments for POE/POP mono(di-sec-butylphenyl) ether is not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for POE/POP mono(di-sec-butylphenyl) ether. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use

insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled *Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts*. (D361707, S. Piper, 2/25/09) and can be found at <http://www.regulations.gov> in docket ID number EPA-HQ-OPP-2008-0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products is generally at least 50% of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient. In the case of POE/POP mono(di-sec-butylphenyl) ether, EPA made a specific adjustment to the dietary exposure assessment to account for the use of these inerts in herbicide formulations only. The Agency identified the residue drivers (crop/tolerance combinations) in this assessment that constitute the majority of the dietary risk, and has replaced the residue value with the highest herbicide tolerances for those commodities. The risk drivers for the dietary assessment for which herbicide tolerances were used were the leafy vegetable (except brassica) crop group, pome fruits, and grapes.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest

tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100% of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer*. The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. POE/POP mono(di-sec-butylphenyl) ether are not expected to be carcinogenic. Therefore, a cancer dietary exposure assessment is not necessary to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for POE/POP mono(di-sec-butylphenyl) ether. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for POE/POP mono(di-sec-butylphenyl) ether in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of POE/POP mono(di-sec-butylphenyl) ether. Further

information regarding EPA drinking water models used in the pesticide exposure assessment can be found at <http://www.epa.gov/oppfed1/models/water/index.htm>.

A screening level drinking water analysis, based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of POE/POP mono(di-sec-butylphenyl) ether. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of POE/POP mono(di-sec-butylphenyl) ether were conducted. Modeled acute drinking water values ranged from 0.001 parts per billion (ppb) to 41 ppb. Modeled chronic drinking water values ranged from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at <http://www.regulations.gov> in the document *Polyoxyethylene Polyoxypropylene Mono(di-sec-Butylphenyl) Ether (JITF CST 20 Inert Ingredients)*. Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations at pp 15–16 and 50–52 in docket ID number EPA-HQ-OPP-2008-0944.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for POE/POP mono(di-sec-butylphenyl) ether, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for chronic dietary risk assessments for the parent compounds and for the metabolites of concern. These values were directly entered into the dietary exposure model.

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). POE/POP mono(di-sec-butylphenyl) ether may be used as inert ingredients in herbicide products that are registered for specific uses that may result in outdoor residential exposures. A screening level residential exposure and risk assessment was completed for herbicide products containing POE/POP mono(di-sec-butylphenyl) ether as inert ingredients. In this assessment, representative scenarios, based on end-use product application methods and labeled application rates, were selected. The POE/POP mono(di-sec-butylphenyl)

may be used as inert ingredients in pesticide formulations (herbicides) that are used around the home. The Agency did not identify any products intended for use on pets or home cleaning products that contain the POE/POP mono(di-sec-butylphenyl) ether inert ingredients. The Agency conducted an assessment to represent worst-case residential exposures to herbicides only by assessing POE/POP mono(di-sec-butylphenyl) ether in herbicide formulations (Outdoor Scenarios). Further details of this residential exposure and risk analysis can be found at <http://www.regulations.gov> in the memorandum entitled *JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations* (D364751, 5/7/09, Lloyd/LaMay in docket ID number EPA-HQ-OPP-2008-0710).

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 POE/POP mono(di-sec-butylphenyl) ether to share a common mechanism of toxicity with any other substances, and the POE/POP mono(di-sec-butylphenyl) ether do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the POE/POP mono(di-sec-butylphenyl) ether do 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 available mammalian toxicology database consists of one combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats for alkyl phenolic glycol ether, three subchronic oral toxicity studies (rats and dogs), and acute data on the representative inerts.

There was no evidence of increased susceptibility in the offspring because no developmental or reproductive toxicity was observed in the OPPTS Harmonized Guideline 870.3650 study. No treatment related effects were observed on litter sizes or on the early development of pups.

3. *Conclusion.* EPA has determined that reliable data show that 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 POE/POP mono(di-sec-butylphenyl) ether is considered adequate for assessing the risks to infants and children (the available studies are described in Unit IV.D.2.).

ii. No developmental or reproductive toxicity was observed in the OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats following prenatal and postnatal exposure and there are no concerns for sensitivity of the offspring.

iii. There was no evidence of neurotoxicity in the database. In addition, there is no indication that POE/POP mono(di-sec-butylphenyl) ether are neurotoxic chemicals and thus there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iv. The primary target organ toxicity observed in the database is thyroid toxicity, prothrombin time, and body weight effects. Thyroid effects are manifested following short duration exposure and only observed at 304 mg/kg/day (the highest dose tested). The Agency has considerable knowledge and understanding of the mechanism of thyroid toxicity. The Agency concluded that any dose that prevents perturbation of thyroid would be protective of chronic and cancer effects. Therefore, the Agency concluded that regulating at a NOAEL of 82 mg/kg/day with effects

seen at 304 mg/kg/day with a hundredfold uncertainty factor ($UF_A=10X$; $UF_h=10X$) provides an adequate margin of protection and that an additional UF for extrapolation from subchronic toxicity study to a chronic exposure scenario is not needed.

v. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100% crop treated is assumed for all crops. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to POE/POP mono(di-sec-butylphenyl) ether in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by POE/POP mono(di-sec-butylphenyl) ether.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the acute populations adjusted dose (aPAD) and chronic population adjusted dose (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-, intermediate-, 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.* There was no hazard attributable to a single exposure seen in the toxicity database for POE/POP mono(di-sec-butylphenyl) ether. Therefore, the POE/POP mono(di-sec-butylphenyl) ether are not expected to pose an acute risk.

2. *Chronic risk.* A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure (including limiting the uses of the POE/POP mono(di-sec-butylphenyl)

ether inert ingredients in agricultural products to use in herbicide formulations and using the maximum herbicide tolerances for key commodities), the chronic dietary exposure from food and water to POE/POP mono(di-sec-butylphenyl) ether is 14% of the cPAD for the U.S. population and 36% of the cPAD for children 1 to 2 yrs old, the most highly exposed population subgroup.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

POE/POP mono(di-sec-butylphenyl) ether are used as inert ingredients in pesticide products that are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to the POE/POP mono(di-sec-butylphenyl) ether. Using the exposure assumptions described in this unit, EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in aggregate MOEs of 110 for both adult males and females, respectively. Adult residential exposure combines high end outdoor dermal and inhalation handler exposure with a high end post application dermal exposure from contact with treated lawns. EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 140 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

POE/POP mono(di-sec-butylphenyl) ether are used as inert ingredients in pesticide products that are currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to POE/POP mono(di-sec-butylphenyl) ether. Using the exposure assumptions described in this unit, EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result

in aggregate MOEs of 470 and 490 for both adult males and females, respectively. Adult residential exposure includes high end post application dermal exposure from contact with treated lawns. EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 190 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to POE/POP mono(di-sec-butylphenyl) ether.

6. *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 residues of POE/POP mono(di-sec-butylphenyl) ether.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for POE/POP mono(di-sec-butylphenyl) ether nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of Polyoxyethylene polyoxypropylene mono(di-sec-butylphenyl) ether when used as an inert ingredient in herbicide formulations only, for pre-harvest uses under 40 CFR 180.920 and used at no more than 30% by weight in herbicide formulations intended for application to turf.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance 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 FFDCA, such as the exemption 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 FFDCA. 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).

VIII. 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 28, 2009.
Lois Rossi,
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. In § 180.920, the table is amended by adding alphabetically the following inert ingredients:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* * *	* * * * *	* * * * *
Polyoxyethylene polyoxypropylene mono(di-sec-butylphenyl) ether (CAS Reg. No. 69029–39–6)	Limited to herbicide formulations only, and to no more than 30% by weight in herbicide formulations intended for application to turf	Surfactants, related adjuvants of surfactants
* * *	* * * * *	* * * * *

[FR Doc. E9–18717 Filed 8–4–09; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0490; FRL–8428–5]

Sodium and Ammonium Naphthalenesulfonate Formaldehyde Condensates; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the sodium and ammonium naphthalenesulfonate formaldehyde condensates, herein referred to in this document as the SANFCs, when used as inert ingredients in pesticide formulations applied to growing crops under 40 CFR 180.920. The Joint Inerts Task Force (JITF), Cluster Support Team Number 11 and Akzo Nobel Surface Chemistry, LLC, submitted petitions to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of the SANFCs.

DATES: This regulation is effective August 5, 2009. Objections and requests for hearings must be received on or before October 5, 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–2009–0490. 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: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: leifer.kerry@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>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

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-2009-0490 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 October 5, 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-2009-0490, 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. Background

In the **Federal Register** of March 4, 2009 (74 FR 9397) (FRL-8401-8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C.

346a(d)(3), announcing the filing of a pesticide petition (PP 9E7516) by The Joint Inerts Task Force (JITF), Cluster Support Team Number 11 (CST 11), c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.920 be amended by establishing exemptions from the requirement of a tolerance for residues of sodium and ammonium naphthalenesulfonate formaldehyde condensates. That notice referenced a summary of the petition prepared by the JITF, CST 11, the petitioner, which is available to the public in the docket, <http://www.regulations.gov>. Docket ID number EPA-HQ-OPP-2009-0043 was established for the petition. There were no comments received in response to the notice of filing.

In the **Federal Register** of March 25, 2009 (74 FR 12856) (FRL-8399-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7405) by Akzo Nobel Surface Chemistry, LLC, 525 West Van Buren Street, Chicago, IL 60607-3823. The petition requested that 40 CFR 180.920 be amended by establishing exemptions from the requirement of a tolerance for residues of mono-, di-, and trimethylnaphthalenesulfonic acids and naphthalenesulfonic acids formaldehyde condensates, ammonium and sodium salts. That notice referenced a summary of the petition prepared by Akzo Nobel Surface Chemistry, LLC, the petitioner, which is available to the public in the docket, <http://www.regulations.gov>. Docket ID number EPA-HQ-OPP-2008-0822 was established for the petition. There were no comments received in response to the notice of filing.

These two petitions are grouped because they fall under the same general chemical description criteria.

These petitions were submitted in response to a final rule published August 9, 2006 (71 FR 45415) (FRL-8084-1) in which the Agency revoked, under section 408(e)(1) of the Federal Food, Drug, and Cosmetic Act (FFDCA), the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by FFDCA section 408(b)(2). The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009, by a final rule published in the **Federal Register** of August 4, 2008 to allow for data to be submitted to support the establishment of tolerance exemptions for these inert

ingredients prior to the effective date of the tolerance exemption revocation.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

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 exemption from the requirement of a tolerance for residues of the SANFCs when used as inert ingredients in pesticide formulations applied to growing crops. 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.

The toxicology database for the SANFC inerts is adequate to support their use as inert ingredients in pesticide formulations. The existing toxicology database for the SANFC consists of two OPPTS Harmonized Guideline 870.3650 (combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats), and several studies from the scientific literature on acute toxicity and mutagenicity.

The available toxicity data indicates that SANFC has low acute oral and inhalation toxicity. SANFC was not mutagenic in an Ames test. In a repeated 28–42 day OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening with the representative test compound, naphthalenesulfonic acid, sodium salt polymer with formaldehyde (CAS 9084–06–4), there was no evidence of increased susceptibility. Parental toxicity manifested as decrements in body-weight gain in both sexes at the limit dose (1,000 milligrams/kilogram/day (mg/kg/day)). No developmental or reproductive effects were observed at doses of 100, 300, and 1,000 mg/kg/day. In an OPPTS Harmonized Guideline 870.3650 study submitted by Akzo Nobel Chemistry, LLC, no systemic toxicity was observed at doses up to and including 456 mg/kg/day. (The highest dose tested). There was no evidence of potential neurotoxicity or immunotoxicity in the adult animal in the OPPTS Harmonized Guideline 870.3650 study at the limit dose of 1,000 mg/kg/day. There is no evidence that the SANFCs are carcinogenic. There are no chronic data available on the SANFC surfactants;

however, no structural alerts for cancer were identified in a qualitative structure activity relationship (SAR) database, DEREK Version 11. In addition, there was little concern about any of the postulated metabolites having greater toxicity than the parent compounds. The higher molecular weight polymeric SANFC surfactants (MW>1,000) are not expected to be readily absorbed or metabolized, and should thus be rapidly excreted (likely in the feces) unchanged. Additionally, lower molecular microsome cytochrome P–450 oxygenases may hydroxylate the naphthalene ring and/or methylene bridge to produce alternative metabolites that should also be readily conjugated and excreted. Furthermore, these compounds are formaldehyde condensates and do not contain free formaldehyde. Therefore, formaldehyde is not a residue of concern. In summary, due to the low hazard potential for these inert compounds, a quantitative risk assessment is not required for the SANFC inerts.

Specific information on the studies received are included in the Agency's Human Health Risk Assessment which can be found at <http://www.regulations.gov> in document Sodium and Ammonium Naphthalenesulfonate Formaldehyde Condensates (SANFCs - JITF CST 11 Inert Ingredients). "Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations," pages 6–8 and pages 11–14 in docket ID number EPA–HQ–OPP–2009–0043 and also in document "Mono-, Di-, and Trimethylnaphthalenesulfonic Acids and Naphthalenesulfonic Acids Formaldehyde Condensates, Ammonium and Sodium Salts: Review of Toxicological Studies in Support of an Exemption from the Requirement of a Tolerance (40 CFR 180.920 and 40 CFR 180.910) When Used as Inert Ingredients in Pesticide Formulations" in docket ID number EPA–HQ–OPP–2008–0822.

B. Toxicity Endpoint Selection and FQPA Considerations

There was no significant hazard identified in the OPPTS Harmonized Guideline 870.3650 study at the limit dose of 1,000 mg/kg/day to either parental animals or their offspring. Thus, due to their low potential hazard and the lack of a hazard endpoint, it was determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate for the SANFCs. The

Agency notes that there was no evidence of neurotoxicity or increased susceptibility to the offspring of rats following prenatal or postnatal exposure in the OPPTS Harmonized Guideline 870.3650 studies. Based on this information, there is no concern, at this time, for increased sensitivity to infants and children to the SANFCs when used as inert ingredients in pesticide formulations applied to growing crops and a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

C. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The SANFC inerts are used as dispersants, defoamers and emulsifiers in pesticide formulations. These surfactants have a wide range of industrial uses as well as serve as emulsifiers in personal care products and in food contact packaging.

The residues of concern are for the parent compound only. Considering the large size and polarity of the SANFC molecules, it is unlikely that they would be readily absorbed by livestock or taken up by plants for further metabolism.

No hazard was identified for the acute and chronic dietary assessment (food and drinking water), or for the short-, intermediate-, and long-term residential assessments, and therefore no quantitative aggregate risk assessments were performed.

D. 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 the SANFCs to share a common mechanism of toxicity with any other substances, and SANFCs do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has

assumed that SANFCs do 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>.

E. Determination of Safety

Based on all available information, 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 residues of the SANFCs when used as inert ingredients in pesticide formulations applied to growing crops.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for the SANFCs nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of the sodium and ammonium naphthalenesulfonate formaldehyde condensates, under the tolerance expression mono-, di-, and trimethylnaphthalenesulfonic acids and naphthalenesulfonic acids formaldehyde condensates, ammonium and sodium salts, when used as inert ingredients in pesticide formulations applied to growing crops under 40 CFR 180.920.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance 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 FFDCA, 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 FFDCA. 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).

VIII. 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 29, 2009.

Lois Rossi,

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. In § 180.920, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* * * *	*	Surfactants, related adjuvants of surfactants
* * * *	*	

[FR Doc. E9-18725 Filed 8-4-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2009-0042; FRL-8424-4]

Methyl Poly(Oxyethylene) C_8-C_{18} Alkylammonium Chlorides; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of methyl poly(oxyethylene) C_8-C_{18} alkylammonium chlorides where the poly(oxyethylene) content is $n=2-15$ and where C_8-C_{18} alkyl is linear and may be saturated or unsaturated, herein referred to in this document as methyl poly(oxyethylene) C_8-C_{18} alkylammonium chlorides (MPOACs), when used as an inert ingredient in pesticide formulations for pre-harvest uses under 40 CFR 180.920 at a maximum of 10% by weight in herbicide formulations and 5% by weight in all other formulations. The Joint Inerts Task Force (JITF), Cluster Support Team (CST No. 7), submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of MPOACs.

DATES: This regulation is effective August 5, 2009. Objections and requests for hearings must be received on or before October 5, 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-2009-0042. 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: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8811; e-mail address: leifer.kerry@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>. To access the OPPTS Hamonized

Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/suidelin.htm>.

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-2009-0042 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 October 5, 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-2009-0042, 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. Background

In the **Federal Register** of March 4, 2009 (74 FR 9397) (FRL-8401-8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7518) by The JITF, CST No. 7, c/o CropLife America, 1156 15th St., NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.920 be

amended by establishing exemptions from the requirement of a tolerance for residues of the inert ingredient methyl poly(oxyethylene) C_8-C_{18} alkylammonium chlorides where the poly(oxyethylene) content is $n=2-15$ and where C_8-C_{18} alkyl is linear and may be saturated or unsaturated (MPOACs) for pre-harvest uses at a maximum of 10% by weight in herbicide formulations and 5% by weight in all other formulations. That notice referenced a summary of the petition prepared by The JITF, CST No. 7, the petitioner, which is available to the public in the docket, <http://www.regulations.gov>.

The Agency received two comments in response to the notice of filing. Both comments were received from private citizens who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commenters' concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of FFDCA, EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute.

This petition was submitted in response to a final rule of August 9, 2006, (71 FR 45415) (FRL-8084-1) in which the Agency revoked, under section 408(e)(1) of the FFDCA, the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by section 408(b)(2) of FFDCA. The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended August 9, 2009 by a final rule published in the **Federal Register** of August 4, 2008. (73 FR 45312) (FRL-8372-7) to allow for data to be submitted to support the establishment of tolerance exemptions for these inert ingredients prior to the effective date of the tolerance exemption revocation.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and

diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

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 exemption from the requirement of a tolerance for residues of MPOACs when used as inert ingredients in pesticide formulations for pre-harvest uses at a maximum of 10% by weight in herbicide formulations and 5% by weight in all other formulations. 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.

The toxicity data available on the MPOACs consists of acute toxicity studies, mutagenicity studies, and an OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test. The majority of the MPOAC compounds are reported as "not acutely toxic" for lethality by the oral and dermal routes of exposure (Toxicity Category III). However, CAS Reg. No. 70750-47-9, the representative test compound, is more toxic by the oral and dermal routes (Toxicity Category II). All MPOACs are severely irritating to the eye (Toxicity Category I), and the MPOAC identified by CAS Reg. No. 70750-47-9 (quaternary ammonium compounds, coco alkylbis(hydroxyethyl)methyl, chlorides) is severely irritating to the skin. Inhalation data on two of the MPOACs indicate irritation at high doses.

The OPPTS Harmonized Guideline 870.3650 study on the representative surfactant, (CAS Reg. No. 70750-47-9) demonstrated severe toxicity in rats, as evidenced by deaths of all test subjects at 100 milligrams/kilogram/day (mg/kg/day) after 5 days, and deaths of 5 out of 10 females at 50 mg/kg/day after 6-8 days of exposure. Given the extremely corrosive nature of the test material, the Agency believes that the high mortality rate is secondary to the forestomach lesions seen in the rats. Further, the Agency notes that the severity of the effects may be related to the unique anatomy of the rats. Humans do not have a forestomach which serves as a storage reservoir in rodents; therefore, effects seen in the rat forestomach are likely to be significantly more severe than what would be expected from the compound in the glandular stomachs in humans and therefore, have less relevance to humans.

The no observed adverse effect level (NOAEL) for developmental and reproductive toxicity is 25 mg/kg/day, the lowest dose tested (LDT). Although no reproductive or developmental effects were observed at the next higher dose of 50 mg/kg/day, the evaluation at

this dose level included only 5 surviving female animals. While the actual lowest observed adverse effect level (LOAEL) for reproductive developmental effects may be higher, or reproductive developmental effects may not occur at all as a result of exposure to this chemical, in the absence of a sufficient number of animals to assess, the Agency has conservatively assumed that if more animals had been available at the mid-dose, developmental or reproductive toxicity might have been observed. There are no concerns for sensitivity of offspring.

There was no evidence of neurotoxicity in this study; functional-observational battery and motor-activity data were similar in all the treatment groups. Liver enzymes were elevated but were not accompanied by microscopic lesions or increased organ weight and were not considered adverse. No carcinogenicity studies are available for the MPOACs. A qualitative structure activity relationship database, DEREK Version 11, identified no structural alerts suggestive of carcinogenicity.

Specific information on the studies received and the nature of the adverse effects caused by MPOACs as well as the NOAEL and the LOAEL from the

toxicity studies can be found at <http://www.regulations.gov> in document MPOACs–JTTF CST No. 7 Inert Ingredients). *Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations* pages 9–13 and pages 25–26 in docket ID number EPA–HQ–OPP–2009–0042.

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 tested (HDT) at which 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 MPOACs used for human health risk assessment is shown in Table 1 of this unit.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR MPOACs FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)	Acute toxicity was not identified.		
Chronic dietary (all populations)	NOAEL = 25 mg/kg/day UF _A = 10x UF _H = 10x Food quality protection act (FQPA) SF = 1x	Chronic RfD = 0.25 mg/kg/day cPAD = 0.25 mg/kg/day	LOAEL = 50 mg/kg/day based on stomach inflammation and mortality associated with the forestomach inflammation
Incidental oral (short-term and intermediate-term)	NOAEL = 25 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x	Residential LOC for MOE = 100	LOAEL = 50 mg/kg/day based on stomach inflammation and mortality associated with the forestomach inflammation.
Dermal and inhalation (all durations)	Quantitative assessment not required: Cluster is corrosive irritating and exposure will be self limiting; expected low-dermal and inhalation absorptions; product is used in low percentages in household products (i.e., low exposure).		
Cancer (oral, dermal, inhalation)	Classification: No animal toxicity data available for an assessment. Based on SAR analysis, MPOACs is not expected to be carcinogenic.		

POD = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). PAD = population adjusted dose (a=acute, c=chronic). FQPA SF = FQPA Safety Factor. RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable.

C. Exposure Assessment

Sufficient data were provided on the chemical identity of the MPOACs; however, limited data are available on

the metabolism and environmental degradation of these compounds. The Agency relied collectively on information provided on the

representative chemical structures, the generic cluster structures, the submitted physicochemical data, structure-activity relationship information, as well as

information on other surfactants and chemicals of similar size and functionality to determine the residues of concern for these inert ingredients. The residues of concern for risk assessment purposes are the parent compounds only.

The registrant selected CAS Reg. No. 70750-47-9, as the test compound because the coco alkyl encompasses the broad range of C₈-C₁₈ alkyl chain included in the descriptor. The Agency concluded that the cluster grouping was appropriate. Further, the Agency also concluded that it is unlikely that any potential environmental degradates that would be found in food and water will be more toxic than the parent compound. Residue estimates used in the dietary risk assessment were chosen to represent an upper bound on the combined residues of parent and any potential metabolite or degradate of concern.

Quantitative dermal or inhalation risk assessments were not performed for residential exposures because the MPOACs are highly corrosive irritating, and therefore, exposure will be self-limiting and will be regulated based on labeling of the formulations. There is not a significant concern for dermal or inhalation exposures due to expected low dermal and inhalation absorptions and the fact that the product is used in low percentages in household products (i.e., low exposure). An aggregate assessment need only be conducted for food, water, and incidental oral exposures.

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to MPOACs, EPA considered exposure under the petitioned-for exemptions from the requirement of a tolerance. EPA assessed dietary exposures from MPOACs in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of MPOACs was seen in the toxicity databases. Therefore, acute dietary risk assessments for MPOACs is not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for MPOACs. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound

exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled *Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts*. (D361707, S. Piper, 2/25/09) and can be found at <http://www.regulations.gov> in docket ID number EPA-HQ-OPP-2008-0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products is generally at least 50% of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient. In the case of MPOACs, EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of MPOACs that may be in formulations (no more than 10% by weight in herbicide formulations) and assumed that the MPOACs are present at the maximum limitations rather than at equal quantities with the active ingredient. This remains a very conservative assumption because surfactants are generally used at levels far below this percentage.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the

active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100% of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer.* The Agency used a qualitative SAR database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. MPOACs are not expected to be carcinogenic. Therefore, a cancer dietary exposure assessment is not necessary to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and PCT information in the dietary assessment for MPOACs. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for MPOACs in drinking water. These simulation models take into account data on the physical, chemical, and fate transport characteristics of MPOACs. Further information regarding EPA drinking water models used in the pesticide exposure assessment can be

found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

A screening level drinking water analysis, based on the Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of MPOACs. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of MPOACs were conducted. Modeled acute drinking water values ranged from 0.001 parts per billion (ppb) to 41 ppb. Modeled chronic drinking water values ranged from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at <http://www.regulations.gov> in the document MPOACs- JITF, (CST No. 7 Inert Ingredients). *Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations*, pages 13-14 and 28-46 in docket ID number EPA-HQ-OPP-2009-0042.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for MPOACs, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for chronic dietary risk assessments for the parent compounds and for the metabolites of concern. These values were directly entered into the dietary exposure model.

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). MPOACs may be used in inert ingredients in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. A screening level residential exposure and risk assessment was completed for products containing MPOACs as inert ingredients. In this assessment, representative scenarios, based on end-use product application methods and labeled application rates, were selected. The MPOACs may be used as inert ingredients in pesticide formulations that are used in and around the home. Additionally, uses are possible in household cleaning products and in personal care products. The Agency has not selected endpoints for dermal or inhalation risk assessment; therefore, only exposure scenarios which will result in oral exposures have

been assessed for the MPOACs. The Agency conducted an assessment to represent worst-case residential exposure by assessing postapplication exposures and risks from MPOACs in pesticide formulations (outdoor scenarios) and MPOACs in disinfectant-type uses (indoor scenarios). Further details of this residential exposure and risk analysis can be found at <http://www.regulations.gov> in the memorandum 9entitled JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the *Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations*; (D364751, 5/7/09, Lloyd/LaMay in docket ID number EPA-HQ-OPP-2008-0710.

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 MPOACs to share a common mechanism of toxicity with any other substances, and the MPOACs do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the MPOACs do 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 SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The toxicity data available on the MPOACs consists of acute toxicity studies, mutagenicity studies, and an OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction developmental toxicity screening test.

There was no evidence of increased sensitivity in young animals because no developmental or reproductive toxicity occurred in the lowest dose group (doses of 25 mg/kg/day) in the reproductive developmental toxicity screening test. Additionally, no developmental or reproductive toxicity was noted in the mid-dose group (doses of 50 mg/kg/day); however, since there were only five surviving female animals in this group, which is considered an insufficient number of animals, the study LOAEL was set at the mid-dose level. The mortality in rats that occurred in the study was associated with forestomach inflammation. Given the extremely corrosive nature of the test material, the Agency believes that the high mortality rate is secondary to the forestomach lesions seen in the rats. Further, the Agency notes that the severity of the effects may be related to the unique anatomy of the rats. Humans do not have a forestomach which serves as a storage reservoir in rodents; therefore effects seen in the rat forestomach are likely to be significantly more severe than what would be expected from the compound in the glandular stomachs in humans, and therefore, have less relevance to humans.

There was no evidence of neurotoxicity in the OPPTS Harmonized Guideline 870.3650 study; functional-observational battery and motor-activity data were similar in all the treatment groups.

There are no residual uncertainties identified in the exposure databases. The dietary (food and water) exposure assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children.

3. *Conclusion.* EPA has determined that reliable data show that 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 MPOACs is considered adequate for assessing the risks to infants and children (the available studies are described in Unit IV.D.2).

ii. No quantitative or qualitative increased susceptibility was demonstrated in the offspring in the OPPTS Harmonized Guideline 870.3650

combined repeated dose toxicity study with the reproduction developmental toxicity screening test in rats following *in utero* and post-natal exposure.

iii. Although mortality occurred in the OPPTS Harmonized Guideline 870.3650 study that was associated with forestomach inflammation, the Agency believes that, given the extremely corrosive nature of the test material, the high mortality rate is secondary to the forestomach lesions seen in the rats. Further, the Agency notes that the severity of the effects may be related to the unique anatomy of the rats. Humans do not have a forestomach which serves as a storage reservoir in rodents; therefore effects seen in the rat forestomach are likely to be significantly more severe than what would be expected from the compound in the glandular stomachs in humans and therefore, have less relevance to humans.

iv. There was no evidence of neurotoxicity in the OPPTS Harmonized Guideline 870.3650 study. Functional-observational battery and motor-activity data were similar in all the treatment groups. Thus, no additional neurotoxicity data are required.

v. While there is no chronic toxicity study, the Agency has concluded that since endpoint risk assessment is based on the forestomach lesions in rats, a very conservative hazard endpoint, coupled with the highly conservative exposure assessment and an absence of evidence of increased sensitivity, or neurotoxicity, the use of the standard 100X inter-species and intra-species UF are adequate to protect infants and children, and no additional UF is needed for extrapolating from subchronic to chronic exposure.

vi. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100 PCT is assumed for all crops. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to MPOACs in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by MPOACs.

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.* There was no hazard attributable to a single exposure seen in the toxicity database for MPOACs. Therefore, the MPOACs are not expected to pose an acute risk.

2. *Chronic risk.* A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure, the chronic dietary exposure from food and water to MPOACs is 16% of the cPAD for the U.S. population and 51% of the cPAD for children 1–2 yrs old, the most highly exposed population subgroup.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

MPOACs are used as an inert ingredients in pesticide products that are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to MPOACs. Using the exposure assumptions described in this unit, EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 190 for children. Children's residential exposure includes hand-to-mouth exposures. As the LOC is for MOEs that are lower than 100, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

MPOACs are currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to MPOACs. Using the exposure assumptions described in this unit, EPA has concluded the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 190 for children. Children's residential exposure includes hand-to-mouth exposures. As the LOC is for MOEs that are lower than 100, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to MPOACs.

6. *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 residues of MPOACs.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for MPOACs nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues methyl poly(oxyethylene) C_8-C_{18} alkylammonium chlorides where the poly(oxyethylene) content is $n=2-15$ and where C_8-C_{18} alkyl is linear and may be saturated or unsaturated (MPOACs) for pre-harvest uses at a maximum of 10% by weight in herbicide formulations and 5% by weight in all other formulations.

VII. 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).

VIII. 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 21, 2009.

G. Jeffrey 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. In §180.920, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
Methyl poly(oxyethylene) C_8-C_{18} alkylammonium chlorides where the poly(oxyethylene) content is $n=2-15$ and where C_8-C_{18} alkyl is linear and may be saturated or unsaturated (CAS Reg. Nos. 3010-24-0, 18448-65-2, 70750-47-9, 22340-01-8, 67784-77-4, 64755-05-1, 61791-10-4, 28724-32-5, 28880-55-9, 68187-69-9, 68607-27-2, 60687-90-3.	Concentration in formulated end use products not to exceed 10% by weight in herbicide products and 5% by weight in all other pesticide products.	Surfactants, related adjuvants of surfactants
* *	* * * * *	

[FR Doc. E9-18348 Filed 8-4-09; 8:45 am]
BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2009-0099; FRL-8428-6]

Sodium Alkyl Naphthalenesulfonate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sodium alkyl naphthalenesulfonate, herein referred to in this document as SANS, when used as an inert ingredient at a maximum of 30% by weight in pesticide formulations for pre-harvest and post-harvest uses, as well as, for application to animals. The Joint Inerts Task Force (JITF), Cluster Support Team Number 10, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCFA), requesting an exemption from the requirement of a tolerance.

This regulation eliminates the need to establish a maximum permissible level for residues of SANS.

DATES: This regulation is effective August 5, 2009. Objections and requests for hearings must be received on or before October 5, 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-2009-0099. 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: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8811; e-mail address: leifer.kerry@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://](http://www.regulations.gov)

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>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

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-2009-0099 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 October 5, 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-2009-0099, 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. Background

In the **Federal Register** of April 15, 2009 (74 FR 17487) (FRL-8409-7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7524) by The Joint Inerts Task Force (JITF), Cluster Support Team 10 (CST 10), c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910 and 40 CFR 180.930 be amended by establishing exemptions from the requirement of a tolerance for residues of the inert ingredient sodium alkyl naphthalenesulfonate (SANS). That notice referenced a summary of the petition prepared by JITF (CST 10), the petitioner, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the exemptions requested by adding a use limitation of not more than 30% by weight in pesticide formulations applied pre-and post-harvest and in pesticide formulations applied to animals. This limitation is based on the Agency’s risk assessment which can be found at <http://www.regulations.gov> in document *Sodium Alkyl Naphthalenesulfonate (SANS) – JITF CST 10 Inert Ingredients. Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations* in docket ID number EPA-HQ-OPP-2009-0099.

This petition was submitted in response to a final rule of August 9, 2006, (71 FR 45415) (FRL-8084-1) in which the Agency revoked, under section 408(e)(1) of the Federal Food, Drug, and Cosmetic Act (FFDCA), the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by section 408(b)(2) of FFDCA. The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009 by a final rule published in the **Federal Register** of August 4, 2008 (73 FR 45312) (FRL-8372-7) to allow for data to be submitted to support the establishment of tolerance exemptions for these inert ingredients prior to the effective date of the tolerance exemption revocation.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own):

Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

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 exemption from the requirement of a tolerance for residues of SANS, when used as an inert ingredient in pesticide formulations for pre-harvest and post-harvest uses, as well as for application to animals provided that the concentration of the SANS inerts is limited to no more than 30% by weight in pesticide formulations. 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.

The representative test compounds for the SANS cluster group include (1) an aqueous mixture containing 80% 3-butyl-naphthalene-1 sulfonate (CAS Reg. No. 25638-17-9) and 20% sodium di-3, 6-dibutyl naphthalene-1-sulfonate (CAS Reg. No. 25417-20-3); (2) a complex mixture from a boiling distillate from petroleum catalytic reformer fractionator residue that includes C₉-rich C₈-C₁₀-alkyl-sodium naphthalenesulfonate (CAS Reg. No. 908356-16-1); and (3) naphthalenesulfonic acid, sodium salt, isopropylate (CAS Reg. No. 68442-09-1), which is a mixture containing sodium diisopropyl and triisopropyl-2-naphthalenesulfonates in a 40:60 ratio, with 6% of mono-isopropyl-2-naphthalenesulfonates. The existing toxicology database for the SANS inerts consists of an OPPTS Harmonized Guideline 870.3650 (combined repeated dose toxicity study with the reproduction/developmental toxicity screening studies in rats) on each of the representative SANS, and several publicly-available studies on acute toxicity. These data are adequate to apply to the SANS inerts when used as inert ingredients in pesticide formulations and to characterize the potential toxic effects of these surfactants.

The sodium alkyl naphthalenesulfonates have low acute oral and inhalation toxicity but are irritating to the skin and eye. No mutagenicity data are available. The OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental

toxicity screening tests on three representative surfactants demonstrate local irritation effects on the forestomach/stomach, reduced body-weight gain during mating (males), and/or decrease in thymus weight and thymus atrophy and microscopic lesions in the kidney (females) in the parental animals. No evidence of neurotoxicity was observed in any of the studies.

There was evidence of increased susceptibility to the offspring of rats following prenatal or postnatal exposure to naphthalenesulfonic acid, sodium salt, isopropylate. Increased post-implantation and postnatal losses and reduced pup body weights were observed at 120 and 288 milligrams/kilograms/day (mg/kg/day), whereas maternal toxicity was observed only at 288 mg/kg/day, as evidenced by mortality, and increase in liver enzymes and creatinine, increased kidney weight, and histopathological lesions in the kidney (tubular cell necrosis), stomach (inflammatory submucosal infiltrates and mucosal ulceration) and liver (hepatic fatty change). Based on the fact that there is a clear NOAEL for the pup effects, the point of departure is based on this endpoint (increased post-implantation and postnatal losses and reduced pup weight) and is protective of the effects seen in the study, and because of the highly conservative inputs used in both the hazard and exposure assessments, there is no residual concern for this finding.

No evidence of increased susceptibility was observed following prenatal or postnatal exposure to the other representative inerts. Following exposure to an aqueous mixture containing 3-butyl-naphthalene-1 sulfonate and sodium di-3, 6-dibutyl naphthalene-1-sulfonate, parental toxicity manifested as microscopic forestomach lesions, and developmental toxicity manifested as decreased pup body weight (↓7-8%). No other developmental effects or reproductive effects were observed, and there was no evidence of neurotoxicity in the adult animal. Following exposure to a complex mixture from a boiling distillate from petroleum catalytic reformer fractionator residue that includes C₉-rich C₈-C₁₀-alkyl-sodium naphthalenesulfonate, parental toxicity manifested as decreased body-weight gain during premating (males), decreased testes weight, increased incidence of hematopoiesis in the liver (females), and an increased incidence of erosion in the glandular stomach (both sexes) at the limit dose. No developmental or reproductive effects were observed, and there was no

evidence of neurotoxicity in the adult animal at the limit dose.

The SANS metabolism and elimination are contingent on both the nature of the alkyl groups and the nature and extent of naphthalene ring substituents. The Agency's August 1998 "Toxicological Review of Naphthalene (CAS Reg. No. 91-20-3)" states that the *in vivo* and *in vitro* metabolism of the parent unsubstituted naphthalene has been studied extensively in mammalian systems. Without a functional group for conjugation, it is expected that the majority of absorbed unsubstituted naphthalene is eliminated and will proceed through microsome cytochrome P-450 oxygenases to 1- and 2-naphthols.

However, in the case of the CST 10 SANS surfactants, in addition to microsome cytochrome P-450 oxygenases, the 1- or 2-sulfonic acid sodium salt moieties on the naphthalene ring may provide a handle by which these compounds can be readily conjugated and eliminated.

There is no evidence that the SANS inert are carcinogenic. The Agency used a qualitative structure activity relationship (SAR) database, DEREK Version 11, to determine if there were structural alerts. No structural alerts were identified. In addition, there was little concern that any of the postulated metabolites would have greater toxicity than the parent compounds.

Specific information on the studies received and the nature of the adverse effects caused by the SANS, 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 document *Sodium Alkyl Naphthalenesulfonate (SANS) – JITF CST 10 Inert Ingredients. Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations*, pages 9-13 and 46-53 in docket ID number EPA-HQ-OPP-2009-0099.

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-, intermediate-, 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 SANS used for human health risk assessment is shown in the following Table 1.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SANS FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)	No appropriate endpoints identified for acute dietary assessment.		
Chronic dietary (all populations)	NOAEL = 50 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x	Chronic RfD = 0.5 mg/kg/day cPAD = 0.5 mg/kg/day	OPPTS Harmonized Guideline 870.3650 Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screen in Rats LOAEL = 120 mg/kg/day, based on increased postnatal loss, reduced viability, decreased birth index
Incidental Oral, (Short- and Intermediate-Term), Dermal and Inhalation (Short, Intermediate-, and Long-term)	NOAEL = 50 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x (5% dermal absorption; inhalation hazard assumed to be equivalent to oral hazard)	Residential LOC for MOE = 100	OPPTS Harmonized Guideline 870.3650 Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screen in Rats LOAEL = 120 mg/kg/day, based on increased postnatal loss, reduced viability, decreased birth index.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SANS FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	Classification: No animal toxicity data available for an assessment. Based on SAR analysis, SANS are not expected to be carcinogenic.		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). PAD = population adjusted dose (a=acute, c=chronic). FQPA SF = FQPA Safety Factor. RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable.

C. Exposure Assessment

Very limited information is available for the sodium alkyl naphthalenesulfonates (SANS) with respect to plant and animal metabolism or environmental degradation. The Agency relied collectively on information provided on the representative chemical structures, the submitted physicochemical data, structure-activity relationship information, as well as information on other surfactants and chemicals of similar size and functionality to determine the residues of concern for these inert ingredients. Based on SAR analysis the SANS inerts are unlikely to degrade in the environment to compounds that are more toxic than the parent compounds; therefore, the parent compounds SANS are the residues of concern.

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to SANS, EPA considered exposure under the petitioned-for exemptions from the requirement of a tolerance. EPA assessed dietary exposures from SANS in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of SANS was seen in the toxicity databases. Therefore, an acute dietary risk assessment for SANS is not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for SANS. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides,

and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled *Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts* (D361707, S. Piper, 2/25/09) and can be found at <http://www.regulations.gov> in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products is generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient. In the case of SANS, EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of SANS that may be in formulations (no more than 30% by weight in pesticide formulations) and assumed that the SANS are present at the maximum limitations rather than at equal quantities with the active

ingredient. This remains a very conservative assumption because surfactants are generally used at levels far below this percentage.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer.* The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural

alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. SANS are not expected to be carcinogenic. Therefore, a cancer dietary exposure assessment is not necessary to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for SANS. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for SANS in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of SANS. Further information regarding EPA drinking water models used in the pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

A screening level drinking water analysis, based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of SANS. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of SANS were conducted. Modeled acute drinking water values ranged from 0.001 parts per billion (ppb) to 41 ppb. Modeled chronic drinking water values ranged from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at <http://www.regulations.gov> in the document *Sodium Alkyl Naphthalenesulfonate (SANS) – JITF CST 10 Inert Ingredients. Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations*, pages 14-15 and 56-58 in docket ID number EPA-HQ-OPP-2009-0099.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for SANS, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for chronic dietary risk assessments for the parent compounds and for the metabolites of concern. These values were directly entered into the dietary exposure model.

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). SANS may be used as inert ingredients in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. A screening level residential exposure and risk assessment was completed for products containing SANS as inert ingredients. In this assessment, representative scenarios based on end-use product application methods and labeled application rates were selected. The SANS may be used as inert ingredients in pesticide formulations that are used in and around the home. Additionally, uses are possible in household cleaning products. For each of the use scenarios, the Agency assessed residential handler (applicator) inhalation and dermal exposure for indoor and outdoor scenarios with high exposure potential (i.e., exposure scenarios with high end unit exposure values) to serve as a screening assessment for all potential residential pesticides containing SANS. Similarly, residential post application dermal and oral exposure assessments were also performed utilizing high end indoor and outdoor exposure scenarios. Further details of this residential exposure and risk analysis can be found at <http://www.regulations.gov> in the memorandum entitled *JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations* (D364751, 5/7/09, Lloyd/LaMay in docket ID number EPA-HQ-OPP-2008-0710).

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 the SANS to share a common mechanism of toxicity with any other substances, and the SANS do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the SANS do 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 representative test compounds for the SANS cluster group includes:

- i. An aqueous mixture containing 80% 3-butyl-naphthalene-1 sulfonate (CAS Reg. No. 25638-17-9) and 20% sodium di-3, 6-dibutyl naphthalene-1-sulfonate (CAS Reg. No. 25417-20-3);
- ii. A complex mixture from a boiling distillate from petroleum catalytic reformer fractionator residue that includes C₉-rich C₈-C₁₀-alkyl-sodium naphthalenesulfonate (CAS Reg. No. 908356-16-1); and
- iii. Naphthalenesulfonic acid, sodium salt, isopropylate (CAS Reg. No. 68442-09-1), which is a mixture containing sodium diisopropyl and triisopropyl-2-naphthalenesulfonates in a 40:60 ratio, with 6% of mono-isopropyl-2-naphthalenesulfonates. The existing toxicology database for the SANS inerts consists of an OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening studies in rats on each of the representative SANS.

In the case of the SANS inerts, there was no increased susceptibility to the offspring of rats following prenatal and postnatal exposure in two of the three OPPTS Harmonized Guideline 870.3650 studies. There were no developmental effects at any dose level up to the limit dose following exposure to (CAS Reg. No. 908356-16-1). In that study, maternal toxicity was manifested as mortality, an increase in liver enzymes and creatinine, increased kidney weight, and histopathological lesions in the kidney (tubular cell necrosis), stomach (inflammatory submucosal infiltrates

and mucosal ulceration), and liver (hepatic fatty change) at 1,000 mg/kg/day. Following exposure to (CAS Reg. No. 25638-17-9) and (CAS Reg. No. 25417-20-3), developmental toxicity (decreased pup body weight; ↓7-8%) was observed at the same dose level where maternal/paternal toxicity was observed, as evidenced by microscopic lesions in the stomach at 540 mg/kg/day.

Developmental toxicity was observed following exposure to (CAS Reg. No. 68442-09-1) at a dose level where no significant effects were observed in the parental animals. Offspring effects included increases in post-implantation loss and postnatal loss and lower pup body weights at dose levels of 120 and 288 mg/kg/day. Parental toxicity was observed at 288 mg/kg/day, as evidenced by mortality, increased kidney weight and histopathological lesions in the kidney (tubular cell necrosis), stomach (inflammatory submucosal infiltrates and mucosal ulceration), and liver (hepatic fatty change), and increase in liver enzymes and creatinine in females. Based on the fact that there is a clear NOAEL (50 mg/kg/day), the point of departure is based on this endpoint (increased postnatal loss, decreased pup viability, reduced birth index) and is protective of the effects seen in the study, and because of the highly conservative inputs used in both the hazard and exposure assessments, there is no residual concern for this finding.

3. *Conclusion.* EPA has determined that reliable data show that 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 SANS is considered adequate for assessing the risks to infants and children (the available studies are described in unit IV.D.2.). The Agency noted changes in thymus weight and thymus atrophy. However, these were determined to be non-specific changes not indicative of immunotoxicity. In addition, no blood parameters were affected. Furthermore, these compounds do not belong to a class of chemicals that would be expected to be immunotoxic. Therefore, the Agency does not believe that an additional uncertainty factor (UF_{db}) for database uncertainties needs to be applied. In addition, this effect was not observed in the pups.

ii. No increased susceptibility of the offspring or reproductive toxicity was demonstrated in the OPPTS Harmonized Guideline 870.3650 reproductive/developmental toxicity studies in rats following prenatal and

postnatal exposure to two of the three representative compounds (540 and 1,000 mg/kg/day). Increased susceptibility was demonstrated in the rat offspring following prenatal and postnatal exposure to one of the three representative compounds. Decreased pup body weight, increased pup mortality, and a lower viability index were observed (120 and 288 mg/kg/day) at a dose level where no parental toxicity was observed. A clear NOAEL was established for these effects, and the point of departure is based on this endpoint. Reproductive toxicity was observed following exposure to one of the representative inerts (120 and 288 mg/kg/day), as evidenced by the reduction in birth index. A clear NOAEL was established for this effect and the point of departure for risk assessment is significantly below the NOAEL for this effect. The selected point of departure for the dietary, dermal and inhalation risk assessments is protective of these offspring effects, thus there are no residual concerns.

iii. There is no indication that SANS are neurotoxic chemicals and thus there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iv. While there is no chronic toxicity data, the Agency has concluded that an additional uncertainty factor is not needed for the use of a subchronic study for a chronic exposure assessment because the adverse effects observed in the available toxicity studies are attributable to the irritant nature of surfactants and would not be expected to increase in severity from subchronic to chronic exposure scenarios. Based on the lack of progression of severity of effects with time, along with the considerable similarities of effects across the species tested, the observation that the vast majority of the effects observed are related to local irritation and corrosive effects, and the highly conservative nature of the exposure assessment, EPA concludes that an additional UF for extrapolation from subchronic toxicity study to a chronic exposure scenario is not needed.

v. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100% crop treated is assumed for all crops. EPA also made conservative (protective)

assumptions in the ground and surface water modeling used to assess exposure to SANS in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by SANS.

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-, intermediate-, 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.* There was no hazard attributable to a single exposure seen in the toxicity database for SANS. Therefore, the SANS are not expected to pose an acute risk.

2. *Chronic risk.* A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure, and the use limitations of not more than 30% by weight in pesticide formulations, the chronic dietary exposure from food and water to SANS is 23% of the cPAD for the U.S. population and 75% of the cPAD for children 1 to 2 years old, the most highly exposed population subgroup.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

SANS are used as inert ingredients in pesticide products that are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to SANS. Using the exposure assumptions described in this unit, EPA has concluded that the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of

120 for both adult males and females, respectively. Adult residential exposure combines high end dermal and inhalation handler exposure with a high end post application dermal exposure. EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 120 for children. Children's residential exposure combines dermal and hand-to-mouth exposures. As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

4. Intermediate-term risk.

Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

SANS are currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to SANS. Using the exposure assumptions described in this unit, EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in aggregate MOEs of 520 for both adult males and females, respectively. Adult residential exposure includes high end post application dermal exposures. EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 130 for children. Children's residential exposure combines dermal and hand-to-mouth exposures. As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to SANS.

6. *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 residues of SANS.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for SANS nor have any CODEX Maximum Residue

Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of sodium alkyl naphthalenesulfonates when used as inert ingredients applied to crops pre-harvest and post-harvest, and to animals at a maximum of 30% by weight in pesticide formulations.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of 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 FFDCA, such as the exemptions 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 FFDCA. 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).

VIII. 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 29, 2009.

Lois Rossi,

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. In § 180.910, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
<p style="text-align: center;">* * * * *</p> <p>Sodium alkyl naphthalenesulfonates (CAS Reg. Nos. 68909-83-1, 68909-84-2, 68909-82-0, 27213-90-7, 26264-58-4, 27178-87-6, 111163-74-7, 908356-16-1, 25417-20-3, 25638-17-9, 145578-88-7, 1322-93-6, 1323-19-9, 7403-47-6, 68442-09-1, 127646-44-0, 908356-18-3).</p> <p style="text-align: center;">* * * * *</p>	<p>Limited to no more than 30% by weight in pesticide end-use products.</p>	<p>Surfactants, related adjuvants of surfactants</p>

■ 4. In § 180.930, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
<p style="text-align: center;">* * * * *</p> <p>Sodium alkyl naphthalenesulfonates (CAS Reg. Nos. 68909-83-1, 68909-84-2, 68909-82-0, 27213-90-7, 26264-58-4, 27178-87-6, 111163-74-7, 908356-16-1, 25417-20-3, 25638-17-9, 145578-88-7, 1322-93-6, 1323-19-9, 7403-47-6, 68442-09-1, 127646-44-0, 908356-18-3).</p> <p style="text-align: center;">* * * * *</p>	<p>Limited to no more than 30% by weight in pesticide end-use products.</p>	<p>Surfactants, related adjuvants of surfactants</p>

[FR Doc. E9-18702 Filed 8-4-09; 8:45 am]
 BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0881; FRL-8429-1]

Pasteuria usgae; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the microbial pesticide, *Pasteuria usgae*, on strawberries when applied/used as a nematocide in accordance with the terms of Experimental Use Permit (EUP) 85004-EUP-1. MacIntosh and Associates, Incorporated, 1203 Hartford Avenue, Saint Paul, MN 55116-1622 (on behalf of Pasteuria Bioscience, Incorporated, 12085 Research Drive, Suite 185, Alachua, FL 32615) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Pasteuria usgae* in or on strawberries. The temporary tolerance exemption expires on December 31, 2010.

DATES: This regulation is effective August 5, 2009. Objections and requests for hearings must be received on or before October 5, 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-2008-0881. 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: Jeannine Kausch, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8920; e-mail address: kausch.jeannine@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:

- 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 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 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 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

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. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. 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-2008-0881 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 on or before October 5, 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 your copies, identified by docket ID number EPA-HQ-OPP-2008-0881, 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. Background and Statutory Findings

In the **Federal Register** of January 8, 2009 (74 FR 808) (FRL-8394-2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 8G7471) by MacIntosh and Associates, Incorporated, 1203 Hartford Avenue, Saint Paul, MN 55116-1622 (on behalf of Pasteuria Bioscience, Incorporated, 12085 Research Drive, Suite 185, Alachua, FL 32615). The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Pasteuria usgae* in or on strawberries. This notice included a summary of the petition prepared by the petitioner MacIntosh and Associates, Incorporated (on behalf of Pasteuria Bioscience, Incorporated). There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(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. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in sections 408(b)(2)(C) and (D) of FFDCA, which require 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. . . ." Additionally, section 408(b)(2)(D) of FFDCA requires that 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 performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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.

Pasteuria, a genus of bacteria, includes a number of species that have shown potential in controlling plant-parasitic nematodes. These bacteria are obligate endoparasites, organisms that grow internally in a limited range of hosts. *Pasteuria usgae*, a recently discovered species, is host-specific for the sting nematode (*Belonolaimus longicaudatus*). This species of *Pasteuria* is pending recognition by the Judicial Commission of the International Committee for Systematic Bacteriology. There is sufficient evidence from morphology, host specificity, and genomics to justify *Pasteuria usgae* as a distinct species. In developing a product for crop application, such as a use on strawberries, the difficulty of growing *Pasteuria* outside of a nematode host has always been an obstacle. This host specificity is at the core of EPA's conclusions that *Pasteuria usgae* may be granted a temporary exemption from the requirement of a tolerance. Additional information regarding *Pasteuria usgae* can be found in the biopesticides registration action document (BRAD) on the Biopesticides and Pollution Prevention Division (BPPD) website: <http://www.epa.gov/pesticides/biopesticides>.

Studies submitted to the Agency were issued master record identification (MRID) numbers and reviewed by BPPD scientists. The following summaries of the toxicological profile of *Pasteuria usgae* are based on an Agency risk assessment memorandum and related data evaluation records dated April 9, 2009.

1. *Acute oral toxicity and pathogenicity – rat, (OPPTS Harmonized Guideline 885.3050; MRID No. 474267-09).* *Pasteuria usgae* does not appear to be toxic and/or pathogenic

in rats when dosed at 1×10^8 spores/animal. There were no treatment-related clinical signs or necropsy findings in rats receiving a single oral dose of 1×10^8 *Pasteuria usgae* spores. Three males in the microbial pest control agent (MPCA)-treated group gained weight through day 14 but lost weight by day 21. All other animals gained weight prior to scheduled sacrifice. Microbial enumeration was not performed because the testing laboratory showed that the test material would not grow on agar media. Therefore, while no significant adverse effects were seen, the typical clearance of the microbe could not be confirmed. However, because the spores are highly specific to sting nematode, infectivity is unlikely to be a concern. This study was rated "Acceptable" and *Pasteuria usgae* was classified as Toxicity Category IV.

2. *Acute injection toxicity and pathogenicity – rat, (OPPTS Harmonized Guideline 885.3200; MRID No. 474267-11)*. There were no treatment-related significant adverse effects seen in the rats receiving a single intravenous dose of 10^8 *Pasteuria usgae* spores. One treated female lost weight by day 7 but gained weight prior to sacrifice on day 14. All other animals gained weight throughout the study. All animals survived and appeared normal during the study. No abnormalities were observed in any animal at necropsy or in harvested organs. No significant variations in organ weight were found between different groups or sexes. The acute intravenous LD_{50} of *Pasteuria usgae* is greater than 1×10^8 spores/animal in male and female rats. *Pasteuria usgae* does not appear to be toxic and/or pathogenic in rats when dosed at 10^8 spores/animal. MRID No. 474267-09 reported that the microbial enumeration was not done because the test material would not grow on agar media. Since microbial enumeration was not performed, the infectivity was uncertain. However, because the spores are highly specific to sting nematode, infectivity is unlikely to be a concern. *Pasteuria usgae* was not pathogenic as tested in this study. This study was rated "Acceptable" and *Pasteuria usgae* was classified as Toxicity Category IV.

3. *Acute dermal toxicity – rat, (OPPTS Harmonized Guideline 885.3100; MRID No. 474267-12)*. Based on the results of this study, *Pasteuria usgae* does not appear to be toxic in rats when treated with 2,000 milligrams/kilogram (mg/kg) at 10^8 spores/milliliter (mL). Thus, the acute dermal LD_{50} is greater than 2,000 mg/kg for 10^8 spores/mL in male and female rats. There were no treatment-related significant adverse effects seen in the dosed rats. Two males and one

female had very slight erythema on day 1 with clearance by day 4. One male lost weight slightly during the second week and one male and two females lost weight during the first week, but all gained weight by the end of the study. All other animals gained weight throughout the study. This study was rated "Acceptable" and *Pasteuria usgae* was classified as Toxicity Category IV.

4. *Acute pulmonary toxicity and pathogenicity – rat, (OPPTS Harmonized Guideline 885.3150; MRID No. 474267-10)*. In an acute pulmonary toxicity and pathogenicity assessment, there were no test substance-related significant adverse effects seen in rats receiving a single dose of approximately $1-3 \times 10^8$ spores of *Pasteuria usgae*. One dosed female exhibited pale lungs. Additionally, one untreated control female lost weight by day 21 and another untreated control female lost weight by day 14 but gained weight by day 21. One MPCA-treated male did not gain weight by day 7 but gained weight thereafter. However, all other animals gained weight throughout the study. Based on these results, *Pasteuria usgae* does not appear to be toxic and/or pathogenic in rats when dosed at approximately $1-3 \times 10^8$ spores/animal. Microbial enumeration was not performed because the testing laboratory showed that the test material would not grow on agar media. Therefore, while no significant adverse effects were seen, the typical clearance of the microbe could not be confirmed. However, because the spores are highly specific to sting nematode, infectivity is unlikely to be a concern. This study was rated "Acceptable" and *Pasteuria usgae* was classified as Toxicity Category IV.

5. *Hypersensitivity Incidents, (OPPTS Harmonized Guideline 885.3400; MRID No. 474350-02)*. No hypersensitivity incidents—involving *Pasteuria usgae* and occurring during fermentation, processing, formulation, or research—have been reported to the Agency. Any future hypersensitivity incidents must be reported per OPPTS Harmonized Guideline 885.3400.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Dietary exposure to *Pasteuria usgae* may occur, mainly through food. However, the lack of acute oral toxicity/pathogenicity, based on the toxicology test on rats presented in Unit III, along with the inability of the microbe to grow outside of a nematode host, support the establishment of a temporary exemption from the requirement of a tolerance for *Pasteuria usgae*. Additionally, under 40 CFR 180.1135, a similar active ingredient, *Pasteuria penetrans*, was assessed previously and granted a permanent exemption from the requirement of a tolerance in or on all raw agricultural commodities, except roots and tubers, when used as a nematicide in the production of fruits and vegetables in greenhouses (59 FR 66740, December 28, 1994).

1. *Food*. The program description for EUP 85004-EUP-1 details application timing and methods, which indicate strawberry exposure to *Pasteuria usgae* is unlikely to occur (e.g., *Pasteuria usgae* formulations are applied via overhead spray or broadcast at bed formation or prior to planting but only via drip irrigation during plant growth). Should exposure to *Pasteuria usgae* take place during the course of EUP 85004-EUP-1, standard practices of washing, cooking, or processing fruits will reduce residues of *Pasteuria usgae* and minimize dietary exposure. Any actual dietary exposure is expected to be several orders of magnitude lower than the dose used in the acute oral toxicity/pathogenicity test referenced in Unit III, during which no toxic or pathogenic effects were observed in rats. The Agency concludes that there is a reasonable certainty that no harm will result from the aggregate exposure to the residues of *Pasteuria usgae* in food.

2. *Drinking water exposure*. Exposure of humans to residues of *Pasteuria usgae* in drinking water is unlikely. The proposed use patterns, use sites, and application methods associated with EUP 85004-EUP-1 do not include direct application to aquatic environments. In the unlikely event that *Pasteuria usgae* is transferred to surface or ground water intended for eventual human consumption, the microbe would not survive the conditions water is subjected to in a drinking water treatment facility, including flocculation, chlorination, pH adjustments, and/or filtration. Even if oral exposure should occur through drinking water, the Agency concludes that there is a reasonable certainty that no harm will result from the exposure to the residues of *Pasteuria usgae* in all the anticipated drinking water

exposures because of the lack of acute oral toxicity/pathogenicity to mammals and the host-specific nature of the microbe, as previously described.

B. Other Non-Occupational Exposure

Potential non-occupational dermal or inhalation exposure is considered unlikely for this distinctly agricultural use with specific application timing and methods.

1. *Dermal exposure.* Non-occupational dermal exposure to *Pasteuria usgae*, when used as labeled and according to the terms of EUP 85004-EUP-1, is expected to be negligible because the use is limited to agricultural settings. Additionally, the methods and timing of application explained in the program description for EUP 85004-EUP-1 should make strawberry exposure to *Pasteuria usgae* unlikely. If non-occupational dermal exposure were to occur through treated food commodities, the risk posed by this low toxicity microbe is likely to be minimal based on the dermal toxicity test described in Unit III.

2. *Inhalation exposure.* Non-occupational inhalation exposure to *Pasteuria usgae*, when used as labeled and according to the terms of EUP 85004-EUP-1, is expected to be negligible because the use is limited to agricultural settings. Additionally, the methods and timing of application allow for sufficient drying of any treated commodities (should exposure to *Pasteuria usgae* even occur) prior to distribution to consumers, which further reduces the possibility for non-occupational inhalation exposure. If non-occupational inhalation exposure were to occur through treated food commodities, the risk posed by this low toxicity microbe is likely to be minimal based on the pulmonary toxicity and pathogenicity test described in Unit III.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires the Agency to consider the cumulative effects of exposure to *Pasteuria usgae* and to other substances that have a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. As demonstrated in Unit III, *Pasteuria usgae* is not toxic or pathogenic to mammals via any of the routes of exposure examined. Consequently, since this microbial pesticide has no demonstrated toxicity and is specific to the sting nematode, there is no reason to anticipate cumulative effects from the residues of this product with other related microbial pesticides.

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold 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 unless EPA determines that a different margin of safety will be safe for infants and children. Margins of exposure (safety), which are often referred to as uncertainty factors, are incorporated into EPA risk assessments either directly or through the use of a margin of exposure analysis, or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk.

Based on the acute toxicity and pathogenicity data discussed in Unit III, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the residues of *Pasteuria usgae*. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because the data available on *Pasteuria usgae* do not demonstrate toxic, pathogenic, or infective potential to mammals. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the considerations of consumption patterns, special susceptibility, and cumulative effects do not apply to pesticides without a demonstrated significant adverse effect.

VII. Other Considerations

A. Endocrine Disruptors

Section 408(p) of the FFDCA requires EPA to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there were

scientific bases for including, as part of its program, androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects on wildlife.

The Agency has no knowledge of *Pasteuria usgae* being an endocrine disruptor, nor is this microbe related to any class of known endocrine disruptors. Following several routes of exposure in rodents, the Tier I toxicology data indicated that the immune system was still intact. However, due to the difficulties in recovering *Pasteuria usgae*, clearance could not be determined; nevertheless, there is no reason to believe that additional data, specifically on the endocrine effects of this microbial pesticide, are required at this time. Consequently, endocrine-related concerns did not impact the Agency's safety finding for *Pasteuria usgae*. When the appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program (EDSP) have been developed and vetted, *Pasteuria usgae* may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

B. Analytical Method(s)

The Agency is establishing a temporary exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for *Pasteuria usgae*.

C. Codex Maximum Residue Level

No Codex maximum residue level exists for *Pasteuria usgae*.

VIII. Statutory and Executive Order Reviews

This final rule establishes a temporary exemption from the requirement of a tolerance 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 FFDCA, such as the temporary exemption from the requirement of a 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 FFDCA. 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).

IX. 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 22, 2009.

Debra Edwards,

Director, 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 180.1290 is added to subpart D to read as follows:

§ 180.1290 *Pasteuria usgae*; temporary exemption from the requirement of a tolerance.

Pasteuria usgae is temporarily exempt from the requirement of a tolerance when applied/used as a nematocide on strawberries in accordance with the terms of EUP 85004-EUP-1. This temporary exemption from the requirement of a tolerance expires and is revoked on December 31, 2010.

[FR Doc. E9-18472 Filed 8-4-09; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 599

[Docket No. NHTSA-2009-0120]

RIN 2127-AK54; Notice 1

Requirements and Procedures for Consumer Assistance To Recycle and Save Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the regulation implementing the Consumer Assistance to Recycle and Save (CARS) Program, published on July 29, 2009 in the Federal Register, under the CARS

Act (Pub. L. 111-32). The rule clarifies the insurance eligibility requirements for trade-in vehicles under the CARS program. The rule makes substantive changes and a conforming amendment related to the timing for disabling trade-in vehicle engines. The rule also makes a technical amendment to the requirements and procedures for identifying salvage auctions and disposal facilities. Finally, we provide a clarification related to the insurance requirement under the CARS Act.

DATES: This final rule is effective August 5, 2009. **Petitions:** If you wish to petition for reconsideration of this rule, your petition must be received by September 21, 2009.

ADDRESSES: If you submit a petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the public docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/search/footer/privacyanduse.jsp>.

FOR FURTHER INFORMATION CONTACT: For questions, you may call David Bonelli, NHTSA Office of Chief Counsel, telephone (202) 366-5834.

SUPPLEMENTARY INFORMATION: This final rule amends the regulation implementing the Consumer Assistance to Recycle and Save (CARS) Program, published on July 29, 2009 (74 FR 37878), under the CARS Act (Pub. L. 111-32). The rule makes substantive changes and a conforming amendment related to the timing for disabling trade-in vehicle engines. The rule also makes a technical amendment to the requirements and procedures for identifying salvage auctions and disposal facilities. Finally, the agency clarifies the application of the insurance requirement under the CARS Act.

a. Engine Disablement

The rule currently requires a dealer that receives an eligible trade-in vehicle under the CARS program to disable that vehicle's engine prior to submitting an application for reimbursement and prior to transferring the vehicle to a disposal facility. That requirement is

implemented in sections 599.300(a), 599.300(d)(2), 599.300(e)(1)(i) and the certifications in Appendix A.

The agency has determined that the requirement for a dealer to disable the engine prior to submitting an application for reimbursement could create an undue hardship for a dealer in some circumstances. For example, a dealer operating in good faith may conduct a non-compliant transaction under the CARS program and extend a credit that is disapproved for reimbursement after the sale or lease of a new vehicle to a customer. If the engine of the trade-in vehicle has already been disabled under these circumstances, as the rule currently requires, the dealer would not only forgo a CARS credit reimbursement, but also be unable to recoup the full value of the trade-in vehicle to mitigate its loss.

With these considerations in mind, this final rule amends the provision relating to the timing of the dealer's disablement of the engine of the trade-in vehicle. The agency is removing the requirement that the dealer disable the engine prior to submitting an application for reimbursement and replacing it with a provision that allows engine disablement before or after submission of the application for reimbursement, but in all cases prior to leaving the dealership or property owned by or under the control of the dealership.

Accordingly, we are amending section 599.300(a) to specify that the dealer must store the trade-in vehicle at the dealership or property owned by or under the control of the dealership until the engine is disabled. We are amending section 599.300(d) to remove the requirement for engine disablement prior to submission of the request for reimbursement and to insert a requirement that the dealer must disable the engine at its dealership or property owned by or under the control of the dealership not more than seven calendar days after the government reimburses the dealer for the value of the credit. The continued storage of the trade-in vehicle and the disablement of trade-in vehicle's engine are conditions of the government's payment of the credit to the dealer that the dealer is obligated to satisfy.

We are amending the certification in Appendix A to allow a dealer to certify, at the time of the submission of the application for reimbursement, that the dealer has either already disabled the engine at the dealership or property owned by or under the control of the dealership or will store the trade-in vehicle at the dealership or property

owned by or under the control of the dealership and disable the engine at the dealership or property owned by or under the control of the dealership not more than seven calendar days after receiving electronic reimbursement for the credit. The amendment does not change the requirement that the dealer disable the engine before the trade-in vehicle is transferred to the disposal facility or salvage auction. The storage requirement enables the agency to inspect to see that the dealer has not shipped the trade-in vehicle prematurely. The rule makes a conforming change section 599.300(d)(3) to retain the requirement to mark the title prior to submission of the application for reimbursement. Finally, today's amendments do not affect the requirements for pre-July 24th trade-in vehicles under the program where the vehicle has already been transferred from the dealership.

b. Technical Amendments

The final rule currently requires salvage auctions, as a condition of participation in the program, to transfer trade-in vehicles only to a disposal facility listed on the agency's website at cars.gov/disposal or to a facility that disposes of vehicles in Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands. Section 599.201(a)(1) of the regulation incorrectly stated that a salvage auction may transfer the vehicle to a disposal facility identified in Section 599.201(b)(2) or (b)(3). The correct citations are Section 599.201(a)(2) or (a)(3). Today's amendment makes that correction.

The agency is amending the Dealer Certifications (Appendix A). We are removing the reference to the "engine block" and replacing it with the "engine" for conformity with the language in the regulation. In this same dealer certification, the phrase "render inoperative" is being replaced with the word "disable." This change, too, allows the dealer certification form in Appendix A to conform to the language used throughout the rule. These changes do not change the meaning of the rule. The procedures of Appendix B, Engine Disablement Procedures for the CARS Program, continue to apply. These dealer certification changes will also be made to the electronic certification screen a dealer sees while entering a transaction. It may take some time to amend the electronic form. However, the new certifications are now available in the Summary of Sale sheet, which should be used immediately. The certifications on this form will control

and the superseded certification on the electronic form will not be binding.

Finally, the agency is amending the Disposal Facility Certification Form (Appendix E) by replacing incorrect information in one of the input fields. We are removing "End of Life Vehicle Solution (ELVS) Identification No. (if assigned)" and replacing it with "NHTSA Disposal Facility Identification No. (if assigned)." The requested number is a unique identifier assigned by NHTSA to the disposal facility identified on the CARS website—it is not assigned by the ELVS program. This correction should resolve the instances of misdirected inquiries from dealers seeking a number from the ELVS program.

c. Insurance Eligibility Requirements

In addressing the requirement under the CARS Act that the trade-in vehicle be "continuously insured consistent with the applicable State law," the agency stated in the preamble to the rule its interpretation that the Act requires all transactions to meet the continuous one-year insurance condition as a threshold matter with respect to any trade-in vehicle under the CARS program. Upon further consideration of the statutory language and because the prior interpretation has only been in effect a few days, the agency has concluded that, in those States with no insurance requirement, the rule's requirement unfairly penalizes consumers who are in compliance with State law. Therefore, today's interpretation exempts trade-in vehicles registered in New Hampshire and Wisconsin from the one-year insurance requirement because both New Hampshire and Wisconsin have no insurance requirement under State Law. As this interpretation is not inconsistent with the existing regulatory text, no change to the rule is necessary; however, the dealer and purchaser certifications (Appendix A) are being amended to make today's interpretation clear.

Statutory Basis for This Action

This final rule makes amendments to implement the Consumer Assistance to Recycle and Save Act (CARS Act) (Pub. L. 111–32), which directs the Secretary to issue final regulations.

APA Requirements and Effective Date

The rule is being issued without first providing a notice and an opportunity for public comment. Section 1302(d) of the CARS Act provides that "notwithstanding" the requirements of section 553 of title 5, United States Code, the Secretary shall promulgate

final regulations to implement the Program not later than 30 days after the date of the enactment of this Act. Given that schedule and the fact that this 4-month program with a statutorily fixed end date has already begun, the agency finds for good cause that providing notice and comment is impracticable and contrary to the public interest for these changes to the final rule. Drafting and issuing a proposed rule, providing a period for public comment, and addressing those comments in the final rule would have been highly impracticable in the time available and would have substantially delayed issuance of this final rule. Because sales of new vehicles under the program have begun in what appears to be high volume, we believe it is necessary to provide these amendments and clarification immediately so that no one will be harmed in making transactions.

Because of the CARS Act schedule and the fact that the 4-month program has already begun, the agency finds that it has good cause to make this rule effective fewer than 30 days after the publication in the **Federal Register**. In view of the fact that sales of new vehicles under the program have begun in what appears to be high volume, we believe it is necessary to provide these amendments and clarifications immediately so that no one will be harmed in making transactions. We also note that, other than the technical provisions, this rule is relieving restrictions in the original final rule. It would, therefore, be inconsistent with Congressional intent, impracticable, and contrary to the public interest, to delay the effective date of the regulation, which would, in turn, adversely affect effective implementation of the program.

Accordingly, the effective date of this final rule is August 5, 2009.

Regulatory Analyses and Notices

Because of the public and Congressional interest in the CARS program, this rulemaking is considered significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It was reviewed by the Office of Management and Budget. The agency has discussed the relevant requirements of the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the National Environmental Policy Act, the Paperwork Reduction Act, and the Unfunded Mandates Reform Act in the July 29, 2009 final rule cited above. This rule does not change the finding in those analyses.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulatory identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/search/footer/privacyanduse.jsp>.

List of Subjects in 49 CFR Part 599

Fuel Economy, Motor Vehicle Safety.

■ In consideration of the foregoing, NHTSA hereby amends 49 CFR part 599 as set forth below.

PART 599—REQUIREMENTS AND PROCEDURES FOR CONSUMER ASSISTANCE TO RECYCLE AND SAVE ACT PROGRAM

■ 1. The authority citation for Part 599 continues to read as follows:

Authority: 49 U.S.C. 32901, Notes; delegation of authority at 49 CFR 1.50.

■ 2. Section 599.201 is amended by revising paragraph (a)(1) to read as follows:

§ 599.201 Identification of salvage auctions and disposal facilities.

(a) * * *

(1) A salvage auction that will transfer trade-in vehicles received under this program only to a disposal facility identified in paragraph (a)(2) or (a)(3) of this section.

* * * * *

■ 3. Section 599.300 is amended by revising paragraphs (a), (d) introductory text, (d)(2), and (d)(3), to read as follows:

§ 599.300 Requirements for qualifying transactions.

(a) *In general.* To qualify for a credit under the CARS Program, a dealer must sell or lease a new vehicle that meets eligibility requirements to a purchaser, obtain a trade-in vehicle that meets

eligibility requirements from the purchaser, satisfy combined fuel economy requirements for both the new and trade-in vehicles, store the trade-in vehicle at the dealership or property owned by or under the control of the dealership until the engine is disabled, disable the engine of the trade-in vehicle at the dealership or property owned by or under the control of the dealership, satisfy the limitations and restrictions of the program, arrange for disposal of the trade-in vehicle at a qualifying disposal facility or through a qualifying salvage auction, and register and submit a complete application for reimbursement to NHTSA, demonstrating that it meets all the requirements of this part.

* * * * *

(d) *Trade-In Vehicle—Disclosure of Scrap Value, Engine Disablement, and Title Marking.* As part of a qualifying transaction under this part, the dealer shall:

* * * * *

(2) Except as provided in paragraph (e) of this section, store the trade-in vehicle at the dealership or property owned by or under the control of the dealership until its engine is disabled following the procedures set forth in Appendix B to this part, disable the engine of the trade-in vehicle at the dealership or property owned by or under the control of the dealership following the procedures set forth in Appendix B to this part, and certify, as provided in Appendix A to this part, dealer certifications section, that either the engine of the trade-in vehicle has been disabled at the dealership or property owned by or under the control of the dealership, or that the trade-in vehicle will be stored at the dealership or property owned by or under the control of the dealership until the engine is disabled and the engine of the trade-in vehicle will be disabled by the dealer at the dealership or property owned by or under the control of the dealership not more than seven calendar days after the dealer's receipt of payment for the transaction; and

(3) Prior to submitting an application for reimbursement under § 599.302, legibly mark the front and back of the trade-in vehicle's title in prominent letters that do not obscure the owner's name, VIN, or other writing as follows: "Junk Automobile, CARS.gov."

* * * * *

■ 4. Revise Appendix A to Part 599 to read as follows:

BILLING CODE 4910-59-P

*Appendix A to Part 599 – Summary of Sale/Lease and Certifications*OMB No. 2127-0660
Expiration Date: 01/31/2010**NHTSA Summary of Sale/Lease & Certifications Form**

www.nhtsa.gov

CARS
car allowance rebate system**SUMMARY OF SALE OR LEASE**

Date of Sale or Lease	
Purchaser Name(s)	
Purchaser Address	
Purchase or Lease (please specify)	
Make	
Model	
Model Year	
New Vehicle VIN	
Trade-In Vehicle VIN	
New Vehicle Base MSRP	
CARS Credit Applied (\$3,500 or \$4,500)	
Dealer's Best Estimate of Trade-In Vehicle Scrappage Value	
Dealer Rebate(s) or Discount(s) (please specify; if none, enter "none.")	
Manufacturer Rebate(s) or Discount(s) (please specify; if none, enter "none.")	
Other available Federal, State, or local incentive(s) or State- issued voucher(s) (please specify; if none, enter "none.")	
Other Rebate(s) or Discount(s) (please specify; if none, enter "none.")	

WARNING

This is a legal document that contains certifications under penalty of law. There are significant civil and criminal penalties for submitting false information. Please read each certification and ensure that the information that you are certifying by signing this document is, to the best of your knowledge and belief, true, accurate, and complete.

DEALER CERTIFICATIONS

The person signing this document as "Dealer" certifies under penalty of law that:

Registration in the CARS Program

- The dealer has been approved as a registered dealer under the CARS program.
- The dealer has a currently active business license under State law to operate a new automobile dealership.
- The dealer has a currently active franchise agreement with an original equipment manufacturer to sell new automobiles.

Summary of Sale or Lease

- The summary of sale or lease set forth above is true and correct.

Purchaser and Trade-In Vehicle Eligibility for the CARS Program

- I have verified the identity of the person signing this document under "Purchaser" (hereinafter simply "Purchaser").
- I have verified that the trade-in vehicle is in drivable condition, and I or an employee under my direction or supervision has operated the trade-in vehicle to confirm that the trade-in vehicle is in drivable condition.
- I have verified that the trade-in vehicle has been continuously insured for a period of not less than one (1) year prior to the date of this transaction (not applicable to trade-in vehicles registered in New Hampshire or Wisconsin).
- I have verified that the Purchaser has been the registered owner of the trade-in vehicle continuously for a period of not less than one (1) year prior to the date of this transaction.
- I have observed the trade-in vehicle's date of manufacture (both month and year) as it appears on the trade-in vehicle's safety standard certification label, and have verified that the trade-in vehicle was manufactured less than 25 years before the date of the trade-in.
- I have verified that the trade-in vehicle's fuel economy is eligible for the CARS program.

New Vehicle Eligibility for the CARS Program

- The new vehicle is being purchased or, in the case of a lease, leased for a period of not less than five (5) years.
- I have verified that the CARS program credit amount requested (i.e., either \$3,500.00 or \$4,500.00, as applicable) corresponds to the difference between the trade-in vehicle's fuel economy and the new vehicle's fuel economy under the requirements of the CARS program.
- The new vehicle has a base manufacturer's suggested retail price (MSRP) as shown on the Monroney label affixed to the new vehicle of \$45,000 or less (exclusive of any accessories, optional equipment, taxes or destination charges).

Transaction Conforms to the Requirements of the CARS Program

- I have reduced the price of the new vehicle that is being purchased or leased by the CARS Program credit amount requested (i.e., either \$3,500.00 or \$4,500.00, as applicable).

- I have disclosed to the Purchaser the best estimate of the scrappage value of the trade-in vehicle.
- I have retained no more than \$50.00 of the scrappage value as payment for any of the dealer's administrative costs in connection with this CARS transaction.
- I have not charged the Purchaser any additional fees for participating in the CARS program in this transaction.
- I have applied the credit under the CARS program in addition to any other rebate or discount advertised by the dealer or offered by the manufacturer for the new vehicle, and have not used the CARS program credit to offset any such other rebate or discount.
- I have not reduced the value of the CARS program credit amount requested (i.e., either \$3,500.00 or \$4,500.00, as applicable) by any other available Federal, State, or local incentive or a State-issued voucher for the purchase or lease of a new fuel efficient automobile.

Disposal of the Trade-in Vehicle

- The trade-in vehicle has not been, and will not be, sold, leased, exchanged or otherwise disposed of for use as an automobile in the United States or in any other country.
- As a condition of the government's payment of the credit to me, (a) I have disabled the engine following the procedures of the CARS Program; or (b) I will store the trade-in vehicle at the dealership or property owned by or under the control of the dealership until the engine is disabled by me, and will disable the engine following the procedures of the CARS Program not more than seven calendar days after receiving payment by the government for the transaction and prior to transferring possession of the trade-in vehicle; or, (c) if this transaction occurred prior to July 24, 2009 and the trade-in vehicle is no longer in my possession, then I have either located the vehicle, disabled the engine following the procedures of the CARS Program and hereby certify that I have done so, or I am submitting to NHTSA under Miscellaneous Documents a sworn affidavit from a disposal facility that the engine block has been crushed or shredded.
- I have transferred or will transfer the trade-in vehicle, including the engine block, to either: (a) a CARS program participating disposal facility that will crush or shred the trade-in vehicle; or, (b) to a participating salvage auction that will transfer the vehicle to such a disposal facility.
- I have provided the disposal facility and/or salvage auction information and written notice that it is responsible for the removal and appropriate disposition of refrigerants, antifreeze, lead products, mercury switches, and such other toxic or hazardous vehicle components prior to the crushing or shredding of an eligible trade-in vehicle, in accordance with all applicable Federal and State requirements.

PURCHASER CERTIFICATIONS

All persons signing this document as "Purchaser" certifies under penalty of law that:

Summary of Sale or Lease

- The summary of sale or lease set forth above is true and correct.

Purchaser and Trade-In Vehicle Eligibility for the CARS Program

- The information I have provided to the dealer verifying my identity is true and correct.
- I have not previously participated in the CARS program.
- The trade-in vehicle is in drivable condition, and an employee of the dealer has operated the trade-in vehicle to confirm that the trade-in vehicle is in drivable condition.

- The trade-in vehicle has been continuously insured for a period of not less than one (1) year prior to the date of this transaction (not applicable to trade-in vehicles registered in New Hampshire or Wisconsin).
- I have been the registered owner of the trade-in vehicle continuously for a period of not less than one (1) year prior to the date of this transaction.
- The trade-in vehicle was manufactured less than 25 years before the date of this transaction.
- The trade-in vehicle's fuel economy is eligible for the CARS program.
- The trade-in vehicle has not been a part of any previous CARS program transaction.

I certify under penalty of law that:

- *I have authority to execute this document,*
- *I have read each of the foregoing certifications,*
- *I understand that payment of the CARS program credit amount is conditioned on compliance with these certifications,*
- *This document, and all attachments, were either prepared by me or prepared under my direction or supervision,*
- *The information set forth in this document, and all attachments, is, to the best of my knowledge and belief, true, accurate, and complete,*
- *I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties under the CARS program, suspension or revocation of continued participation in the CARS program, as well as fines and/or imprisonment.*

DATE: _____, 2009

DEALER

(signature)

(print name)

(title)

(contact phone and e-mail)

DATE: _____, 2009

PURCHASER

(signature)

(print name)

DATE: _____, 2009

PURCHASER (ADDITIONAL) (if any)

(signature)_____
(print name)**Privacy Act Statement**

This notice is provided pursuant to the Privacy Act of 1974, 5 USC § 552a: This information is solicited under the authority of Public Law 111-32, 123 Stat. 1859. Furnishing the information is voluntary, but failure to provide all or part of the information may result in disapproval of your request for a credit on this purchase or lease transaction under the Cars Program. The principal purposes for collecting the information are to determine if purchase or lease transactions are eligible for credits under the CARS Program, to ensure proper disposal of trade-in vehicles, to prevent, identify and penalize fraud in connection with the Program, and to update an existing government database of Vehicle Identification Numbers. If you complete the optional survey, the survey information will be used to report to Congress on the Program. Other routine uses are published in the Federal Register at 65 F.R. 19476 (April 11, 2000), available at: www.dot.gov/privacy.

Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2127-0660. Public reporting for this collection of information is estimated to be approximately 17 minutes per response for dealers, 11 minutes for buyers, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, National Highway Traffic Safety Administration, 1200 New Jersey Ave, S.E., Washington, DC, 20590.

NHTSA Form 1072

- 5. Revise Appendix E to Part 599 to read as follows:

signing this document is, to the best of your knowledge and belief, true, accurate, and complete.

The person signing this document certifies under penalty of law that:

- This facility appears on the CARS program Disposal Facility List.
- This facility participates in the End of Life Vehicle Solutions (ELVS) program. (Excluding facilities located in Maine or a U.S. territory).
- This facility is capable of crushing or shredding the trade-in vehicle, either with its own equipment or by use of a mobile crusher.
- This facility meets all applicable Federal and State laws.
- This facility has a currently active State license to operate as a disposal facility in the State where it is located.
- This facility received the trade-in vehicle bearing the above listed Vehicle Identification Number (VIN) on the date listed above from the dealer or salvage auction listed above.
- I, or an employee of this facility under my direction or supervision, will report to the National Motor Vehicle Title Information System (NMVTIS) the status of the trade-in vehicle as a scrap vehicle not more than seven (7) days after the above-listed date of receipt.
- The trade-in vehicle has not been, and will not be, sold, leased, exchanged or otherwise disposed of for use as an automobile in the United States or in any other country.
- This facility will not transfer the trade-in vehicle to another disposal facility prior to its crushing or shredding.
- This facility will not sell or transfer the trade-in vehicle's engine block and drive train (unless with respect to the drive train, the transmission, drive shaft, or rear end are sold as separate parts) at any time prior to its crushing or shredding.
- I, or an employee of this facility under my direction or supervision, will dispose of refrigerants, antifreeze, lead products, mercury switches, and such other toxic or hazardous vehicle components prior to the crushing or shredding of the trade-in vehicle, in accordance with all applicable Federal and State requirements.
- If this facility participates in ELVS, I, or an employee of this facility under my direction or supervision, will return all mercury switches in accordance with the procedures of the National Vehicle Mercury Switch Recovery Program (NVMSRP).
- I, or an employee of this facility under my direction or supervision, will crush or shred (or cause to be crushed or shredded on our premises), the trade-in vehicle within one-hundred eighty (180) days after the above-listed date of receipt.
- I, or an employee of this facility under my direction or supervision, will report to NMVTIS that this facility crushed or shredded the trade-in vehicle not more than seven (7) days after the date of crushing or shredding. (**Note:** The CARS program does not require that this facility, or any other entity which may subsequently receive the crushed trade-in vehicle, subsequently submit to NHTSA a CARS program Disposal Facility Certification Form, nor does it require that this facility, or any other entity which may subsequently receive the crushed trade-in vehicle, report to NMVTIS that the crushed trade-in vehicle has been shredded).

I certify under penalty of law that:

- ***I have authority to execute this document,***
- ***I have read each of the foregoing certifications,***
- ***This document, and any attachments, were either prepared by me or prepared under my direction or supervision,***
- ***The information set forth in this document, and any attachments, is, to the best of my knowledge and belief, true, accurate, and complete,***

- ***I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties under the CARS program, suspension or revocation of continued participation in the CARS program, as well as fines and/or imprisonment.***

DATE: _____, 2009

DISPOSAL FACILITY

(signature)_____
(print name)_____
(title)_____
(contact phone and e-mail)**Privacy Act Statement**

This notice is provided pursuant to the Privacy Act of 1974, 5 USC § 552a: This information is solicited under the authority of Public Law 111-32, 123 Stat. 1859. Furnishing the information is voluntary, but failure to provide all or part of the information may result in disapproval of a request for a credit on this purchase or lease transaction under the Cars Program. The principal purposes for collecting the information are to ensure proper disposal of trade-in vehicles, to prevent, identify and penalize fraud in connection with the Program, and to update an existing government database of Vehicle Identification Numbers. Other routine uses are published in the Federal Register at 65 F.R. 19476 (April 11, 2000), available at: www.dot.gov/privacy.

Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2127-0658. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, National Highway Traffic Safety Administration, 1200 New Jersey Ave, S.E., Washington, DC, 20590.

NHTSA Form 1073

Issued on: July 31, 2009.

Ronald L. Medford,

Acting Deputy, Administrator.

[FR Doc. E9-18835 Filed 8-3-09; 4:15 pm]

BILLING CODE 4910-59-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344-9056-02]

RIN 0648-XQ75

Fisheries of the Exclusive Economic Zone Off Alaska; Other Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of "other rockfish" in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2009 total allowable catch (TAC) of "other rockfish" in the Western Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 31, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 TAC of "other rockfish" in the Western Regulatory Area of the GOA is 357 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2009 TAC of "other rockfish" in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that "other rockfish" caught in the Western

Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of "other rockfish" in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 30, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2009.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. E9-18703 Filed 7-31-09; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344-9056-02]

RIN 0648-XQ76

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Western

Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2009 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 31, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA is 3,713 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2009 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that Pacific ocean perch caught in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of shortraker rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 30, 2009.

The AA also finds good cause to waive the 30-day delay in the effective

date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2009.

Alan D. Risenhoover,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

[FR Doc. E9-18705 Filed 7-31-09; 4:15 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 149

Wednesday, August 5, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-A153

[NRC-2008-0663]

Industry Codes and Standards; Amended Requirements

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Proposed rule.

SUMMARY: The NRC is proposing to amend its regulation governing vessel head inspection requirements. This amendment would revise the upper range of the percentage of axial flaws permitted in a specimen set used in the qualification of nondestructive examination systems (procedures, personnel and equipment), for the performance of inservice inspection (ISI) of pressurized water reactor (PWR) upper reactor vessel head penetrations. This amendment is being proposed as a result of the withdrawal of a stakeholder's recommendation necessitated by a typographical error in the original recommendation with respect to the maximum percentage of flaws that should be oriented axially.

DATES: The comment period for this proposed rule ends on September 4, 2009. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information that you do not want to be publicly disclosed.

Federal eRulemaking Web site: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2008-0663. Address questions

about NRC dockets to Carol Gallagher 301-492-3668; e-mail

Carol.Gallagher@nrc.gov.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemaking and Adjudications Staff.

E-mail comments to:

Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR):

The public may examine and have copied for a fee. Publicly available documents related to this rulemaking, including comments, may be viewed electronically on the public computers located at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Manash K. Bagchi, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-2905, e-mail manash.bagchi@nrc.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title, which is found in the Rules and Regulations section of this **Federal Register** Notice. Because the NRC considers this rule to be non-controversial, the agency is publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on October 19, 2009. However, if the NRC receives significant adverse comments on the

direct final rule by September 4, 2009, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring publication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

Lists of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by Reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC proposes to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 194 (2005).

Section 50.7 also issued under Public Law 95-601, sec. 10, 92 Stat. 2951 as amended by Public Law 102-486, Sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Public Law 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Public Law 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91,

and 50.92 also issued under Public Law 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.55a, paragraph (g)(6)(ii)(D)(4)(ii) is revised to read as follows:

§ 50.55a Codes and Standards

* * * * *

(g) * * *
 (6) * * *
 (ii) * * *
 (D) * * *
 (4) * * *

(ii) The specimen set must have a minimum of ten (10) flaws which provide an acoustic response similar to PWSCC indications. All flaws must be greater than 10 percent of the nominal pipe wall thickness. A minimum of 20 percent of the total flaws must initiate from the inside surface and 20 percent from the outside surface. At least 20 percent of the flaws must be in the depth ranges of 10–30 percent through wall thickness and at least 20 percent within depth range of 31–50 percent through wall thickness. At least 20 percent and no more than 60 percent of the flaws must be oriented axially.

* * * * *

Dated at Rockville, Maryland, this 24th day of July 2009.

For the Nuclear Regulatory Commission,
Bruce S. Mallett,

Acting Executive Director for Operations.
 [FR Doc. E9-18549 Filed 8-4-09; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-29087; Directorate Identifier 2007-NM-094-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-600, -700, -700C, -800 and -900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 737-600, -700, -700C, -800 and -900 series airplanes.

The original NPRM would have required repetitive lubrication of the left and right main landing gear (MLG) forward trunnion pins; and an inspection for discrepancies of the transition radius, lead-in chamfer, and cross bolt bore of the MLG forward trunnion pins, and repair or replacement if necessary. Doing the applicable inspections and repairs/replacements, or overhauling the trunnion pins as proposed in the original NPRM, would end the repetitive lubrication requirements of this proposed AD. The original NPRM resulted from a report that the protective finishes on the forward trunnion pins for the left and right MLG might have been damaged during final assembly. This action revises the original NPRM by changing the inspection of the trunnion pins to allow inspection in-situ. If a certain repair is done, this action would require repetitive inspections for discrepancies of the transition radius. We are proposing this supplemental NPRM to prevent cracking of the forward trunnion pin, which could result in fracture of the pin and consequent collapse of the MLG.

DATES: We must receive comments on this supplemental NPRM by August 31, 2009.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6440; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-29087; Directorate Identifier 2007-NM-094-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737-600, -700, -700C, -800 and -900 series airplanes. That original NPRM was published in the **Federal Register** on August 31, 2007 (72 FR 50292). That original NPRM proposed to require repetitive lubrication of the left and right main landing gear (MLG) forward trunnion pins; and an inspection for discrepancies of the transition radius, lead-in chamfer, and cross bolt bore of the MLG forward trunnion pins, and repair or replacement if necessary. The NPRM specified that the applicable inspections

and repairs/replacements, or overhauling the trunnion pins, ends the repetitive lubrication requirements of this AD.

Actions Since Original NPRM Was Issued

We referred to Boeing Service Bulletin 737-32-1376, Revision 1, dated March 19, 2007, as the appropriate source of service information for accomplishing the actions proposed in the original NPRM. Since we issued the original NPRM, Boeing issued Service Bulletin 737-32-1376, Revision 2, dated August 6, 2008, to provide procedures for an in-situ detailed inspection for discrepancies of transition radius of the MLG forward trunnion pins, and for in-situ repair of the protective finish of the forward trunnion pin transition radius. Revision 2 of the service bulletin also provides procedures for inspecting the lead-in chamfer and the cross bolt bore with the MLG removed. Revision 2 of the service bulletin also includes new cost information. For airplanes on which the repair specified in Part 4 of Revision 2 of the service bulletin is done, the service bulletin provides procedures for repetitive inspections of the transition radius until the trunnion pin is overhauled or replaced.

Boeing Service Bulletin 737-32-1376, Revision 2, dated August 6, 2008, specifies that no more work is necessary on airplanes changed in accordance with Boeing Service Bulletin 737-32-1376, Revision 1, dated March 19, 2007.

In Boeing Service Bulletin 737-32-1376, Revision 2, dated August 6, 2008, the threshold has been changed to 120 months for doing the in-situ detailed inspection of the lead-in chamfer and cross-bolt bore for any airplane on which a trunnion pin is not replaced.

Clarification of Service Bulletin

In paragraph 1.E., "Compliance" of Boeing Service Bulletin 737-32-1376, Revision 2, dated August 6, 2008, note (d) of Table 1 and note (a) of Table 2 state that repair of the trunnion pin in accordance with the Boeing 737 Component Maintenance Manual (CMM) 57-15-01 meets "all compliance requirements of this service bulletin for that pin only." However, operators should note that an overhaul of the entire pin rather than a local repair is necessary to comply with the requirements of this proposed AD.

Explanation of Additional Paragraph in the Supplemental NPRM

We have added a new paragraph (d) to this supplemental NPRM to provide the Air Transport Association (ATA) of America code. This code is added to

make this supplemental NPRM parallel with other new AD actions. We have reidentified subsequent paragraphs accordingly.

Comments

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

Agreement with Lubrication Task

Air Transport Association (ATA), on behalf of its member American Airlines (AA), agrees with the lubrication task required every 30 days.

Requests to Reduce Burden on Operators

We received several comments regarding the burden on operators imposed by the actions proposed in the original NPRM. These commenters note the difficulty and expense of accomplishing certain inspections, and request we reduce that burden as follows:

- Southwest Airlines and Continental Airlines request that we clarify the original NPRM to note that the inspections of the transition radius do not require removing the MLG. Southwest also requests that we revise the compliance time from 96 months to 120 months for some inspections of the trunnion pin, and that we postpone the issuance of the final rule pending development of a new inspection procedure. Continental states that the complexity of the inspections will affect the operation of the airline by removing multiple airplanes from service.

- ATA, on behalf of AA, states that the cost impact is grossly underestimated, and that the costs to AA alone will be over \$1.7 million, including out-of-service revenue costs.

We agree that requiring operators to remove the MLG in order to do the actions proposed in the original NPRM could impose an undue burden. The proposed requirement to remove the MLG could severely affect the airlines by forcing multiple airplanes to be out of service at the same time. As a result of the comments we received, we held a multi-operator meeting. Boeing, the FAA, and several operators attended the meeting. Operators provided Boeing with new inspection data from airplanes that had already been inspected. Boeing evaluated the data and, in cooperation with the airlines, developed an alternative inspection procedure that does not require removal of the MLG. That alternative procedure is specified in Boeing Service Bulletin 737-32-1376, Revision 2, dated August 6, 2008, described above. We have included that alternative procedure in this

supplemental NPRM. In addition, we have revised paragraph (h) of the original NPRM (paragraph (i) of this supplemental NPRM) from 96 months to 120 months in this supplemental NPRM, as recommended in Boeing Service Bulletin 737-32-1376, Revision 1, dated March 19, 2007.

Request to Remove Certain Inspections

Continental Airlines requests that we delete paragraph (h) of the original NPRM (paragraph (i) of this supplemental NPRM). Paragraph (h) of the original NPRM specifies doing a detailed inspection for discrepancies of the lead-in chamfer and cross-bolt bore, and repairing or replacing the trunnion pin if any discrepancy is found. The commenter believes there is no propensity for stress corrosion to exist in certain areas of the trunnion pin.

We partially agree with the commenter. We agree that the inspections specified in Boeing Service Bulletin 737-32-1376, Revision 1, dated March 19, 2007, can be modified. However, we do not agree that the inspections can be deleted entirely. Additional information provided to Boeing during the multi-operator meeting discussed previously resulted in revised inspections that are included in Boeing Service Bulletin 737-32-1376, Revision 2, dated August 6, 2008. The revised inspections are included in paragraph (i) of this supplemental NPRM.

Request to Revise Compliance Time for Certain Airplanes

Boeing requests that the AD specify a separate compliance time for Boeing Model 737-BBJ, C40A, and C40B airplanes. Boeing notes that these airplanes might not enter service immediately upon delivery and, therefore, their exposure to the effects of the environment is reduced.

We disagree with the request to specify a separate compliance time for these airplanes. The circumstances surrounding when these airplanes enter service are variable; therefore, defining a consistent compliance time for all of these airplanes is not possible. However, under the provisions of paragraph (l) of this supplemental NPRM, we will consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed the AD in this regard.

FAA’s Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this supplemental NPRM 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. The changed inspections described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Costs of Compliance

There are about 890 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is \$80 per work hour.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Repetitive lubrication	2	\$160 per lubrication cycle	300	\$48,000 per lubrication cycle.
Inspections (in situ)	2	\$160	300	\$48,000.

Authority for this Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–29087; Directorate Identifier 2007–NM–094–AD.

Comments Due Date

(a) We must receive comments by August 31, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008.

Subject

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

Unsafe Condition

(e) This AD results from a report that the protective finishes on the forward trunnion pins for the left and right main landing gear (MLG) might have been damaged during final assembly. We are issuing this AD to prevent cracking of the forward trunnion pin, which

could result in fracture of the pin and consequent collapse of the MLG.

Compliance

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

Lubrication or Overhaul

(g) Within 30 days after the effective date of this AD: Lubricate the left and right MLG forward trunnion pins in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008. Repeat the lubrication at intervals not to exceed 30 days until all applicable requirements of paragraphs (h) and (i) of this AD have been accomplished. Overhauling the trunnion pin in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008, ends the repetitive lubrication requirements of this paragraph for that pin.

Inspection and Corrective Actions

(h) Within 60 months after the date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later: Do a detailed inspection for discrepancies (corrosion, finish damage, surface deformation, or scratches) of the transition radius of the left and right MLG trunnion pins; and if any discrepancy is found, repair or replace the trunnion pin before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008. If the repair specified in Part 4 of the service bulletin is done, within 24 months after doing the repair, do the detailed inspection of the transition radius, and do the inspection thereafter at intervals not to exceed 24 months until the trunnion pin is overhauled or replaced in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008.

(i) For airplanes on which the trunnion pin has not been replaced or overhauled: Within 120 months after the date of issuance of the original airworthiness certificate or date of

issuance of the original export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later, do a detailed inspection for discrepancies of the lead-in chamfer and cross-bolt bore; and if any discrepancy is found, repair or replace the trunnion pin before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737-32-1376, Revision 2, dated August 6, 2008.

No Report Required

(j) Although Boeing Service Bulletin 737-32-1376, Revision 2, dated August 6, 2008, specifies to send inspection reports to the manufacturer, this AD does not include that requirement.

Credit for Actions Done Using Previous Issue of Service Information

(k) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 737-32-1376, dated May 12, 2005; or Revision 1, dated March 19, 2007; are acceptable for compliance with the corresponding actions of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6440; fax (425) 917-6590. Or, e-mail information to 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

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

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

Issued in Renton, Washington, on July 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E9-18642 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0699; Directorate Identifier 2009-CE-042-AD]

RIN 2120-AA64

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

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

ACTION: 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:

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

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

If left uncorrected, this condition could lead to a potentially dangerous veer along the runway; in fact, according to the Aircraft Flight Manual limitations, the steering system must be in 'off' position during landing and takeoff (in this case when airspeed is higher than 60 knots).

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 September 21, 2009.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

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-2009-0699; Directorate Identifier 2009-CE-042-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD 2009-0129, dated June 19, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

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

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

If left uncorrected, this condition could lead to a potentially dangerous veer along the runway; in fact, according to the Aircraft Flight Manual limitations, the steering system must be in 'off' position during

landing and takeoff (in this case when airspeed is higher than 60 knots).

For the reasons stated above, this new AD mandates repetitive inspections for leakage of the Nose Landing Gear steering manifold.

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

Relevant Service Information

Piaggio Aero Industries S.p.A. has issued:

- Service Bulletin (Mandatory) N. 80–0249, rev. 1, dated May 27, 2009;
- (for S/N 1004 through 1104) Piaggio Aero Piaggio P.180 Avanti Maintenance Manual, Report No. 9066, 32–50–00, revised June 16, 2008; and
- (for S/N 1105 and greater) Piaggio Aero Piaggio P.180 Avanti II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00, revised December 19, 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 the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences between this Proposed 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

We estimate that this proposed AD will affect 63 products of U.S. registry.

We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$40,320, or \$640 per product.

In addition, we estimate that any necessary follow-on actions would take about 16 work-hours and require parts costing \$0, for a cost of \$1,280 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 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:

Piaggio Aero Industries S.p.A.: Docket No. FAA–2009–0699; Directorate Identifier 2009–CE–042–AD.

Comments Due Date

(a) We must receive comments by September 21, 2009.

Affected ADs

(b) None.

Applicability

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

Subject

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

Reason

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

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

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

If left uncorrected, this condition could lead to a potentially dangerous veer along the runway; in fact, according to the Aircraft Flight Manual limitations, the steering system must be in 'off' position during landing and takeoff (in this case when airspeed is higher than 60 knots).

For the reasons stated above, this new AD mandates repetitive inspections for leakage of the Nose Landing Gear steering manifold. The MCAI requires, if any inspection finds leakage of the steering manifold, the replacement of the steering manifold.

Actions and Compliance

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

(1) Within the next 6 months after the effective date of this AD or within the next 100 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed every 165 hours TIS, do a

functional check of the nose landing gear (NLG) steering manifold. Follow the accomplishment instructions of Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N. 80-0249, rev. 1, dated May 27, 2009.

(2) Upon installation of a NLG steering manifold on any airplane, do a functional check of the NLG steering manifold. Repetitively thereafter at intervals not to exceed every 165 hours TIS, do a functional check of the NLG steering manifold. Follow the accomplishment instructions of Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N. 80-0249, rev. 1, dated May 27, 2009.

(3) If during any inspection required in paragraphs (f)(1) and (f)(2) of this AD a NLG steering manifold does not pass the functional tests, using the compliance times in the accomplishment instructions of Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N. 80-0249, rev. 1, dated May 27, 2009, replace the NLG steering manifold following (for S/N 1004 through 1104) pages 1 through 8; 201 through 216; and 501 through 506, of Piaggio Aero Piaggio P.180 Avanti Maintenance Manual, Report No. 9066, 32-50-00, revised June 16, 2008; or (for S/N 1105 and greater) pages 1 through 8; 201 through 216; and 501 through 506, of Piaggio Aero Piaggio P.180 Avanti II Maintenance Manual, Report No. 180-MAN-0200-01105, 32-50-00, revised December 19, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI EASA AD 2009-0129, dated June 19, 2009; and Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N. 80-0249, rev. 1, dated May 27, 2009, for related information.

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

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-18685 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0703; Directorate Identifier 2009-NM-093-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701 & 702) Airplanes, Model CL-600-2D15 (Regional Jet Series 705) Airplanes, and Model CL-600-2D24 (Regional Jet Series 900) 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: There have been four reports of loose or detached main landing gear torque link apex pin locking plate and the locking plate retainer bolt. This condition could result in torque link apex pin disengagement, heavy vibration during landing, damage to main landing gear components and subsequent main landing gear collapse.

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 September 4, 2009.

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

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

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

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

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact 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>. 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: Pong Lee, Aerospace Engineer, Airframe and Mechanical Systems 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:

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-2009-0703; Directorate Identifier 2009-NM-093-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>.

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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2009-20, dated May 1, 2009 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

There have been four reports of loose or detached main landing gear torque link apex pin locking plate and the locking plate retainer bolt. This condition could result in torque link apex pin disengagement, heavy vibration during landing, damage to main landing gear components and subsequent main landing gear collapse.

Investigation has determined that incorrect stack-up tolerances of the apex joint or improper installation of the locking plate and apex nut could result in torque link apex pin disengagement. This directive mandates [a one-time detailed] inspection of the torque link apex joint [for correct installation and damage, and corrective actions if necessary] and replacement of the torque link apex nut. The corrective actions include re-installing parts that are not correctly installed and replacing damaged parts. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA-32-019, Revision A, dated September 18, 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 361 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. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$115,520, 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:

Bombardier, Inc. (Formerly Canadair):

Docket No. FAA-2009-0703; Directorate Identifier 2009-NM-093-AD.

Comments Due Date

(a) We must receive comments by September 4, 2009.

Affected ADs

(b) None.

Applicability

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

(1) Model CL-600-2C10 (Regional Jet Series 700, 701 & 702) airplanes, serial numbers (S/Ns) 10003 and subsequent.

(2) Model CL-600-2D15 (Regional Jet Series 705) airplanes and Model CL-600-2D24 (Regional Jet Series 900) airplanes, S/Ns 15001 and subsequent.

Subject

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

Reason

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

There have been four reports of loose or detached main landing gear torque link apex pin locking plate and the locking plate retainer bolt. This condition could result in torque link apex pin disengagement, heavy vibration during landing, damage to main landing gear components and subsequent main landing gear collapse.

Investigation has determined that incorrect stack-up tolerances of the apex joint or improper installation of the locking plate and apex nut could result in torque link apex pin disengagement. This directive mandates [a

one-time detailed] inspection of the torque link apex joint [for correct installation and damage, and corrective actions if necessary] and replacement of the torque link apex nut. The corrective actions include re-installing parts that are not correctly installed and replacing damaged parts.

Actions and Compliance

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

(1) For Model CL-600-2C10 airplanes, S/Ns 10003 through 10223 inclusive; and Model CL-600-2D15 and Model CL-600-2D24 airplanes, S/Ns 15001 through 15035 inclusive, 15038, 15039, and 15042: Within 900 flight hours after the effective date of this AD, perform a one-time detailed inspection and all applicable corrective actions on the torque link apex joint, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA-32-019, Revision A, dated September 18, 2008, except as provided by paragraph (f)(5) of this AD. Do all applicable corrective actions before further flight.

(2) For Model CL-600-2C10 airplanes, S/Ns 10003 through 10239 inclusive; and Model CL-600-2D15 and CL-600-2D24 airplanes, S/Ns 15001 through 15057 inclusive: Within 4,500 flight hours after the effective date of this AD, replace or rework the apex nut, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA-32-019, Revision A, dated September 18, 2008.

(3) As of the effective date of this AD, no person may install, on any airplane, a replacement MLG shock strut assembly identified in paragraph (f)(3)(i) or (f)(3)(ii) of this AD, unless it has been reworked in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA-32-019, Revision A, dated September 18, 2008.

(i) Part number (P/N) 49000-11 through 49000-22 inclusive, and with a serial number in the range of S/N 0001 through 0284 inclusive (the serial number can start with "MA," "MAL," or "MA-").

(ii) P/N 49050-5 through 49050-10 inclusive, and with a serial number in the range of S/N 1001 through 1114 inclusive (the serial number can start with "MA," "MAL," or "MA-").

(4) Inspections, corrective actions, replacements, and rework accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 670BA-32-019, dated March 16, 2006, are considered acceptable for compliance with the corresponding actions specified in this AD.

(5) The inspections specified in paragraph (f)(1) of this AD are not required if the actions specified in paragraph (f)(2) of this AD have already been accomplished; or if Bombardier Repair Engineering Order 670-32-11-0022, dated October 22, 2005; or Goodrich Service Concession Request SCR 0056-05, dated October 22, 2005; has been incorporated.

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, 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 Lee, Aerospace Engineer, Airframe and Mechanical Systems 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. 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.

(h) *Special Flight Permits:* 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), are not allowed.

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF-2009-20, dated May 1, 2009; and Bombardier Service Bulletin 670BA-32-019, Revision A, dated September 18, 2008; for related information.

Issued in Renton, Washington, on July 28, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E9-18731 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0682; Directorate Identifier 2008-NM-200-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-300, 747-400, 747SR, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747 airplanes. The existing AD currently requires repetitive inspections for cracking, and repair as necessary, of lower lobe body frames (sections 42 and 46) of the fuselage. The existing AD also provides for optional modification of the frames, which terminates the repetitive inspections. This proposed AD would require additional repetitive inspections for cracking of certain fuselage frames, and corrective actions if necessary. This proposed AD would also revise the AD applicability. This proposed AD results from a new report of a crack found in a body frame with a tapered side guide bracket at fuselage station 1800, located on the left side between stringers 39 and 40; the frame was severed. We are proposing this AD to detect and correct the loss of structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

DATES: We must receive comments on this proposed AD by September 21, 2009.

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

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

- *Fax:* 202-493-2251.

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

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

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-2009-0682; Directorate Identifier 2008-NM-200-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On August 4, 1986, we issued AD 86-18-01, amendment 39-5390 (51 FR 28691, August 11, 1986), for certain

Boeing Model 747 airplanes. That AD requires repetitive inspections for cracking, and repair as necessary, of lower lobe body frames (sections 42 and 46) of the fuselage. That AD also provides for optional modification of the frames, which terminates the repetitive inspections. That AD resulted from a finding of numerous body frame cracks in the lower lobe of the fuselage. We issued that AD to prevent failure of the structure, which could lead to rapid decompression of the airplane.

Actions Since Existing AD was Issued

Since we issued AD 86-18-01, we received a report of a crack found in a body frame with a tapered side guide bracket at fuselage station 1800. The body frame was located on the left side between stringers 39 and 40 and was severed. Investigation revealed that frames with tapered side guide brackets and frames with the optional terminating action incorporated are also susceptible to cracking. As a result, we have determined that additional inspections are necessary, as specified in the service information described below. In addition, we have determined that it is necessary to revise the AD applicability to include the affected frames on certain other airplanes, as specified in the service information described below.

Other Related Rulemaking

On February 16, 2006, we issued AD 2006-05-02, amendment 39-14499 (71 FR 10605, March 2, 2006), for all Boeing Model 747-200F, 747-200C, 747-400, 747-400D, and 747-400F series airplanes. That AD requires repetitive inspections for cracking of certain fuselage internal structure, and repair if necessary. That AD resulted from fatigue tests and analysis that identified areas of the fuselage where fatigue cracks can occur. We issued that AD to prevent loss of the structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

On September 26, 2005, we issued AD 2005-20-30, amendment 39-14327 (70 FR 59252, October 12, 2005), for certain Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-300, 747SP, and 747SR series airplanes. That AD supersedes an existing AD and requires repetitive inspections to detect cracks in various areas of the fuselage internal structure, and repair if necessary. That AD also requires repetitive inspections of additional areas of the fuselage internal structure, and related investigative/corrective actions if necessary. That AD also removes certain requirements from the existing AD. That AD resulted from fatigue testing of the

fuselage structure of a Boeing Model 747SR series airplane. We issued that AD to prevent the loss of the structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

The inspections specified in this proposed AD are not necessary on airplanes on which the repetitive inspections have been done in accordance with AD 2005-20-30 and AD 2006-05-02.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747-53A2749, dated September 25, 2008. The service bulletin describes procedures for a detailed inspection for cracking of the inner chord and vertical web of the left and right side body frames from fuselage stations 1500 to 1800, stringers 39 to 40; and corrective actions if necessary. The corrective action is repairing any crack found.

For airplanes that have accumulated 22,000 total flight cycles or more, the service bulletin specifies that no work is necessary. Those airplanes are being inspected per the requirements of AD 2005-20-30 or AD 2006-05-02, as applicable.

For all other airplanes, the compliance time for the detailed inspection for cracking of the inner chord and vertical web is before the accumulation of 10,000 total flight cycles, or 10,000 flight cycles after installation of a tapered strap, or within a specified grace period. The grace period is either 2,000 flight cycles after the date on the service bulletin or 3,000 flight cycles after the most recent inspection, depending on the airplane configuration and inspection status.

The service bulletin specifies repeating the inspection every 3,000 flight cycles until the accumulation of 22,000 total flight cycles.

The service bulletin also includes doing a detailed inspection for cracks in any existing repair and the adjacent structure, and corrective actions if necessary. The service bulletin also provides for optional installation of a tapered strap if no crack is found, which extends the repetitive inspection interval.

The service bulletin specifies doing the detailed inspection of the repair within 3,000 flight cycles or 10,000 flight cycles after the repair was done, depending on whether a tapered strap is installed. The service bulletin also specifies repeating the inspection every 3,000 flight cycles until the accumulation of 22,000 total flight cycles.

The service bulletin also recommends as a corrective action contacting Boeing before further flight for repair instructions if cracking is found on the installed repair, tapered strap, or adjacent structure.

FAA’s Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 86–18–01 and would retain the requirements of the existing AD. This proposed AD

would also require accomplishing the actions specified in Boeing Alert Service Bulletin 747–53A2749, dated September 25, 2008, described previously.

Change to Existing AD

This proposed AD would retain the requirements of AD 86–18–01. Since AD 86–18–01 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 86–18–01	Corresponding requirement in this proposed AD
Paragraph A	Paragraph (g).
Paragraph B	Paragraph (h).
Paragraph C	Paragraph (i).
Paragraph D	Paragraph (j).

Costs of Compliance

There are about 237 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 86–18–01).	370	\$80	\$29,600, per inspection cycle ...	112	\$3,315,200, per inspection cycle.
Additional inspections (new proposed action).	6	80	\$480, per inspection cycle	87	\$41,760, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

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 39–5390 (51 FR

28691, August 11, 1986), and adding the following new AD:

Boeing: Docket No. FAA–2009–0682; Directorate Identifier 2008–NM–200–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 21, 2009.

Affected ADs

(b) This AD supersedes AD 86–18–01.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2749, dated September 25, 2008.

Subject

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

Unsafe Condition

(e) This AD results from a report of a crack found in a body frame with a tapered side guide bracket at fuselage station 1800, located on the left side between stringers 39 and 40; the frame was severed. The Federal Aviation Administration is issuing this AD to detect and correct the loss of structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

Compliance

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

Restatement of Requirements of AD 86-18-01, with Revised Service Information**Repetitive Inspections**

(g) For airplanes listed in Boeing Alert Service Bulletin 747-53A2237, Revision 1, dated March 28, 1986: Perform a detailed visual inspection for frame cracking from fuselage section 540 to 760, and 1820 to 1900, stringers 35 left to 42 left, in accordance with Section III of Boeing Alert Service Bulletin 747-53A2237, Revision 1, dated March 28, 1986. Do the inspection at the time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable. If any crack is found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or using a method approved in accordance with the procedures specified in paragraph (p) of this AD. Repeat the inspection at intervals not to exceed 3,000 landings until the terminating action specified in paragraph (g)(4) or (k) of this AD is performed.

(1) Within 300 landings for airplanes that have accumulated more than 12,000 landings on September 17, 1986 (the effective date of AD 86-18-01, amendment 39-5390).

(2) Within 800 landings for airplanes that have accumulated 10,000 to 12,000 landings on September 17, 1986.

(3) Within 800 landings or prior to the accumulation of 10,000 landings, whichever occurs later, for airplanes that have accumulated less than 10,000 landings on September 17, 1986.

(4) Modification of the frames before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747-53A2237, Revision 1, dated March 28, 1986, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD.

(h) For airplanes listed in Boeing Alert Service Bulletin 747-53A2259, Revision 1, dated April 18, 1986: Perform a visual inspection of cargo side guide support brackets from fuselage station 1500 to 1800, right and left hand side, for a proper machined taper in accordance with Section III of Boeing Alert Service Bulletin 747-53A2259, Revision 1, dated April 18, 1986. Do the inspection at the time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, as applicable. If any cargo side guide support bracket is improperly tapered, perform a detailed visual inspection of the frame area adjacent to the untapered bracket for cracking in accordance with Boeing Alert Service Bulletin 747-53A2259, Revision 1, dated April 18, 1986. If any crack is found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or using a method approved in accordance with the procedures specified in paragraph (p) of this AD. Repeat the detailed visual inspection at intervals not to exceed 3,000 landings until the terminating action specified in paragraph (h)(4) of this AD is performed.

Accomplishment of the inspections required by paragraph (k) of this AD terminates the inspections required by this paragraph.

(1) Within 300 landings for airplanes that have accumulated more than 12,000 landings on September 17, 1986 (the effective date of AD 86-18-01, amendment 39-5390).

(2) Within 800 landings for airplanes that have accumulated 10,000 to 12,000 landings on September 17, 1986.

(3) Within 800 landings or prior to the accumulation of 10,000 landings, whichever occurs later, for airplanes that have accumulated less than 10,000 landings on September 17, 1986.

(4) Installation of a tapered strap adjacent to the affected brackets before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747-53A2259, Revision 1, dated April 18, 1986, constitutes terminating action for the repetitive inspections required by paragraph (h) of this AD.

(i) For Boeing Model 747SR airplanes only, based on continued mixed operation of cabin pressure differentials, the initial inspection thresholds and reinspection intervals specified in AD 86-18-01 may be multiplied by a 1.2 adjustment factor. This provision is not applicable to paragraphs (k), (m), and (n) of this AD.

(j) For the purposes of complying with AD 86-18-01, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 pounds per square inch. This provision is not applicable to paragraphs (k), (m), and (n) of this AD.

New Requirements of this AD**Repetitive Inspections**

(k) For airplanes identified in Boeing Alert Service Bulletin 747-53A2749, dated September 25, 2008, that have accumulated 22,000 or fewer total flight cycles as of the effective date of this AD: Do initial and repetitive detailed inspections for frame cracking from fuselage body stations 1500 to 1800, stringers 39 to 40, by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2749, dated September 25, 2008, except as required by paragraph (l) of this AD. Do the inspections and corrective actions at the times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747-53A2749, dated September 25, 2008, except as required by paragraphs (m) and (n) of this AD. Accomplishment of the inspections required by this paragraph terminates the inspections required by paragraph (h) of this AD.

Exceptions to Service Bulletin Procedures

(l) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747-53A2749, dated September 25, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(m) Where Boeing Alert Service Bulletin 747-53A2749, dated September 25, 2008, specifies a compliance time after the date of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(n) Where Boeing Alert Service Bulletin 747-53A2749, dated September 25, 2008, specifies a compliance time related to accomplishing an action "as given in Boeing Service Bulletin 747-53A2259," this AD

requires compliance within the specified compliance time after the applicable compliance time required by paragraph (h) of this AD.

Terminating Action

(o) Accomplishing the repetitive frame inspections required by AD 2006-05-02, amendment 39-14499, or AD 2005-20-30, amendment 39-14327, terminates the inspections required by paragraphs (g), (h), and (k) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with paragraph (A) of AD 86-18-01, are approved as alternative methods of compliance with the corresponding requirements of paragraph (g) of this AD.

(4) AMOCs approved previously in accordance with paragraph (B) of AD 86-18-01, are approved as alternative methods of compliance with the corresponding requirements of paragraph (h) of this AD.

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

Issued in Renton, Washington, on July 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-18641 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2009-0689; Directorate Identifier 2009-NM-092-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-1A11 (CL-600), CL-600-2A12 (CL-601), CL-600-2B16 (CL-601-3A) 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 cases have been reported in which the ADG [air driven generator] has failed to power the essential bus following in-flight deployment as part of its periodic operational check. Subsequent inspection revealed that the ADG power feeder harness wire (* * * aromatic polyimide) had chafed on the backshell of its own connector (P1XC), resulting in a short circuit, wire damage and disconnection of the wire from the ADG. Coupled with a dual generator failure, such a disconnection would result in the loss of emergency power to critical systems, with a consequent adverse effect on the controllability of the aircraft.

* * * * *

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 September 4, 2009.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact 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>. 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:

Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7311; fax (516) 794-5531.

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-2009-0689; Directorate Identifier 2009-NM-092-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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2009-18, dated April 27, 2009 (referred to after this as "the MCAI"), to correct an unsafe

condition for the specified products. The MCAI states:

Two cases have been reported in which the ADG [air driven generator] has failed to power the essential bus following in-flight deployment as part of its periodic operational check. Subsequent inspection revealed that the ADG power feeder harness wire (* * * aromatic polyimide) had chafed on the backshell of its own connector (P1XC), resulting in a short circuit, wire damage and disconnection of the wire from the ADG. Coupled with a dual generator failure, such a disconnection would result in the loss of emergency power to critical systems, with a consequent adverse effect on the controllability of the aircraft.

This directive mandates an inspection to determine the type of wire in the installed ADG power feeder harness. If the wires are a * * * (aromatic polyimide) type, the ADG power feeder harness is to be replaced with one incorporating * * * (non-aromatic polyimide) type wire.

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

Relevant Service Information

Bombardier has issued Service Bulletins 600-0737 and 601-0591, both dated July 23, 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 203 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$32,480, or \$160 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:

Bombardier, Inc. (Formerly Canadair):

Docket No. FAA-2009-0689; Directorate Identifier 2009-NM-092-AD.

Comments Due Date

(a) We must receive comments by September 4, 2009.

Affected ADs

(b) None.

Applicability

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

(1) Bombardier Model CL-600-1A11 (CL-600) airplanes, serial numbers 1004 through 1085 inclusive.

(2) Bombardier Model CL-600-2A12 (CL-601) airplanes, serial numbers 3001 through 3066 inclusive.

(3) Bombardier Model CL-600-2B16 (CL-601-3A) airplanes, serial numbers 5001 through 5131 inclusive.

Subject

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

Reason

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

Two cases have been reported in which the ADG [air driven generator] has failed to power the essential bus following in-flight deployment as part of its periodic operational check. Subsequent inspection revealed that the ADG power feeder harness wire (* * * aromatic polyimide) had chafed on the backshell of its own connector (P1XC), resulting in a short circuit, wire damage and disconnection of the wire from the ADG. Coupled with a dual generator failure, such a disconnection would result in the loss of emergency power to critical systems, with a consequent adverse effect on the controllability of the aircraft.

This directive mandates an inspection to determine the type of wire in the installed ADG power feeder harness. If the wires are a * * * (aromatic polyimide) type, the ADG power feeder harness is to be replaced with one incorporating * * * (non-aromatic polyimide) type wire.

Actions and Compliance

(f) Unless already done, within 26 months after the effective date of this AD, inspect the ADG power feeder harness to determine the wire type, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 600-0737 or 601-0591, both dated July 23, 2007, as applicable. A review of airplane maintenance records is acceptable in lieu of this inspection if the wire type of the power feeder harness can be conclusively determined from that review. If the wire type is determined to be aromatic polyimide, replace the ADG power feeder harness, before further flight, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 600-0737 or 601-0591, both dated July 23, 2007, as applicable.

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, 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: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7311; fax (516) 794-5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF-2009-18, dated April 27, 2009; and Bombardier Service Bulletins 600-0737 and 601-0591, both dated July 23, 2007; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E9-18640 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0554; Airspace
Docket No. 09-ANM-8]

Proposed Establishment of Class E Airspace; Eastsound, WA

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Eastsound, WA. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Eastsound Orcas Island Airport, Eastsound, WA. The FAA is proposing this action to enhance the safety and management of aircraft operations at Eastsound Orcas Island Airport, Eastsound, WA.

DATES: Comments must be received on or before September 21, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366-9826. You must identify FAA Docket No. FAA-2009-0554; Airspace Docket No. 09-ANM-8, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009-0554 and Airspace Docket No. 09-ANM-8) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2009-0554 and Airspace Docket No. 09-ANM-8". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace designated as a surface area at Eastsound Orcas Island Airport, Eastsound, WA. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Eastsound Orcas Island Airport, Eastsound, WA. This action would enhance the safety and management of aircraft operations at Eastsound Orcas Island Airport, Eastsound, WA.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Eastsound Orcas Island Airport, Eastsound, WA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

Paragraph 6002. Class E airspace designated as surface areas.

* * * * *

ANM WA E2 Eastsound, WA [New]

Eastsound Orcas Island Airport, WA (Lat. 48°42'29" N., long. 122°54'38" W.)

Within a 3.8-mile radius of the Eastsound Orcas Island Airport and within 3.7 miles each side of the 163° bearing extending from the 3.8-mile radius to 9.2 miles south of the Eastsound Orcas Island Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility directory.

* * * * *

Issued in Seattle, Washington, on July 27, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–18684 Filed 8–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2009–0349; Airspace Docket No. 09–ANM–6]

Proposed Modification of Class E Airspace; Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Pueblo Memorial Airport, CO. Additional controlled airspace is necessary to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to Pueblo Memorial Airport, CO. The FAA is proposing this action to enhance the safety and management of aircraft operations at Pueblo Memorial Airport, CO.

DATES: Comments must be received on or before September 21, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–0349; Airspace Docket No. 09–ANM–6, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2009–0349 and Airspace Docket No. 09–ANM–6) and be submitted in triplicate to the Docket Management System (*see ADDRESSES* section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: “Comments to FAA Docket No. FAA–2009–0349 and Airspace Docket No. 09–ANM–6”. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for

comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA’s Web page at http://www.faa.gov/airports/airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see the ADDRESSES* section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM’s should contact the FAA’s Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Pueblo Memorial Airport, CO. Additional controlled airspace extending upward 700 feet or more above the surface is necessary to accommodate en route IFR aircraft at Pueblo Memorial Airport, Pueblo, CO. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical

regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Pueblo Memorial Airport, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

Paragraph 6005. Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Pueblo, CO [Modified]

Pueblo Memorial Airport, CO
(Lat. 38°17'21" N., long. 104°29'48" W.)

That airspace extending upward from 700 feet above the surface within 21.8-mile radius of the Pueblo Memorial Airport, and within the 28.8-mile radius of Pueblo Memorial Airport clockwise between the 070° and 133° bearing from the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 38°30'00" N., on the east by V–169, on the south by V–210, on the west by a line from lat. 37°38'00" N., long. 105°00'02" W.; to lat. 38°09'25" N., long. 105°08'06" W.; to lat. 38°05'51" N., long. 105°30'49" W.; to lat. 38°10'00" N., long. 105°33'02" W.; to lat. 38°30'00" N., long. 105°33'02" W.; that airspace extending upward from 13,700 feet MSL bounded by a line beginning at lat. 38°09'25" N., long. 105°08'06" W.; to lat. 37°38'00" N., long. 105°00'02" W.; to lat. 37°34'00" N., long. 105°12'02" W.; to lat. 38°05'51" N., long. 105°30'49" W.; thence to point of beginning, excluding that airspace within Federal airways and the Colorado Springs, CO, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on July 27, 2009.

H. Steve Karnes,

*Acting Manager, Operations Support Group,
Western Service Center.*

[FR Doc. E9–18736 Filed 8–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–112756–09]

RIN 1545–BI60

Amendments to the Regulations Regarding Questions and Answers Relating to Church Tax Inquiries and Examinations

AGENCY: Internal Revenue Service ("IRS"), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations amending the questions and answers relating to church tax inquiries and examinations. These proposed regulations replace references to positions that were abolished by the Internal Revenue Service Restructuring and Reform Act of 1998 with references that are consistent both with the statute and the IRS's current organizational structure.

DATES: Written or electronic comments and requests for a public hearing must be received by November 3, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–112756–09), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–112756–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS–REG–112756–09).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Benjamin Akins at (202) 622–1124 or Monice Rosenbaum at (202) 622–6070; concerning submission of comments and requests for a public hearing, Richard Hurst, Richard.A.Hurst@irscounsel.treas.gov, (202) 622–7180 (not a toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Restrictions on Church Tax Inquiries and Examinations

This document contains amendments to the regulations on Procedure and Administration (26 CFR part 301) under section 7611 of the Internal Revenue Code. Section 7611 was enacted by section 1033 of the Deficit Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 1034–1039) ("DRA 1984").

Prior to the enactment of section 7611, section 7605(c) imposed special requirements that the IRS had to meet before it could examine church books of account, but there were no special requirements imposed before the IRS could commence an investigation or inquiry into a church's tax liabilities. As explained in the Conference Report accompanying DRA 1984, H.R. Rep. No. 98–861, 98th Cong., 2d Sess. 1101 (1984), 1984–3 CB Vol. 2 355, Congress sought to address certain problems that arise when the IRS examines the records of a church. Thus, Congress expanded the requirements relating to IRS interactions with churches. Although prior law imposed limitations on the examination of church records, those limitations were somewhat vague and relied on internal IRS procedures to protect the rights of a church in the examination process. Additionally, there was some uncertainty regarding the scope of the investigations to which prior law applied and the nature of the

records protected by the law. The enactment of section 7611 attempted to resolve these competing considerations by providing detailed rules for the IRS to follow in making tax inquiries to churches, both as to tax-exempt status and as to the existence of unrelated business income.

Section 7611(a)(2) permits the IRS to begin an inquiry into whether a church qualifies for exemption from income tax as an organization described in section 501(c)(3) or whether a church has a liability for unrelated business income tax only if an appropriate high-level Treasury official first reasonably believes on the basis of facts and circumstances, recorded in writing, that the church may not be exempt under section 501(a), or that the church may be carrying on an unrelated trade or business, or may be otherwise engaged in activities subject to tax. Section 7611(h)(7) provides that the term "appropriate high-level Treasury official" means the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region. The legislative history of section 7611 interprets the term "appropriate high-level Treasury official" to mean an IRS Regional Commissioner (or higher official). H.R. Rep. No. 98-861, 98th Cong. 2d Sess. 1101 (1984), 1984-3 CB Vol. 2 355. Final regulations under section 7611, which were published on February 21, 1986, 50 FR 6219, also interpret the term to mean an IRS Regional Commissioner. See Treas. Reg. § 301.7611 Q1-A1.

Section 7611(b)(2)(A) provides that at least 15 days before the beginning of a church tax examination, the IRS must provide notice of the examination to both the church and the appropriate regional counsel. Section 7611(b)(3)(C) provides that any regional counsel who receives notice under section 7611(b)(2)(A) may submit to a regional commissioner an advisory objection to the examination within 15 days after the notice of examination is provided.

Section 7611(c)(1)(A) provides that the IRS must make a final determination as to any church tax inquiry or examination within two years of the date the notice of examination is provided to the church under section 7611(b). In instances where no examination follows a church tax inquiry, section 7611(c)(1)(B) requires the IRS to make a final determination as to the inquiry no later than 90 days after the date the notice of inquiry is provided to the church under section 7611(a). Section 7611(c)(2) suspends the periods described in section 7611(c)(1)

(that is, 2 year period and 90 day period) while certain judicial proceedings are pending or being appealed, including proceedings brought by the IRS against a church seeking to compel compliance with a reasonable request to examine church records or religious activities.

Section 7611(d)(1) prohibits the IRS from making certain final determinations (that is, revocation of tax-exempt status, notice of deficiency, or assessment) regarding a church until after the appropriate regional counsel determines in writing that there has been substantial compliance with the requirements of section 7611. Section 7611(d)(1) further requires the appropriate regional counsel's written approval of such final determination before the IRS can make the determination.

Section 7611(e)(1) provides that if the IRS has not substantially complied with the requirements of section 7611, any proceeding to compel compliance with a summons shall be stayed until the court finds that the IRS has taken all practicable steps to correct the noncompliance. Section 7611(e)(2) states that the remedy provided in subsection (e)(1) shall be the exclusive remedy for a church in regard to any noncompliance by the IRS with the requirements of section 7611.

Under section 7611(f), the IRS may not commence an inquiry or examination of a church if, within the previous five years, the IRS completed an inquiry or examination regarding the church that did not result in a revocation, notice of deficiency, assessment, or a request for a significant change in the church's operating practices. An exception exists where the Secretary or his delegate approves the second inquiry or examination in writing. There is also an exception where the issues involved in the subsequent inquiry or examination are not the same or similar to issues involved in the preceding inquiry or examination. Prior to the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 ("RRA 1998"), discussed below, section 7611(f) required the Assistant Commissioner (Employee Plans and Exempt Organizations), instead of the Secretary or his delegate, to approve subsequent inquiries and examinations for the exception to apply.

Reorganization of the IRS

Section 1001 of RRA 1998 requires the Commissioner of Internal Revenue to develop and implement a plan to reorganize the IRS. The congressional mandate provides that the plan shall

"eliminate or substantially modify the existing organization of the IRS which is based on a national, regional, and district structure; [and] establish organizational units serving particular groups of taxpayers with similar needs * * *." Under the reorganized IRS, four nationwide operating divisions were established to serve different types of taxpayers. One of these operating divisions serves tax exempt and government entities, including churches.

Section 1102(e)(3) of RRA 1998 amended section 7611(f)(1), relating to second inquiries and examinations within five years of a previous inquiry or examination, by replacing Assistant Commissioner (Employee Plans and Exempt Organizations) with Secretary. Under section 7701(a)(11)(B), Secretary is defined to refer to the Secretary of the Treasury or his delegate. RRA 1998 did not amend other portions of section 7611, such as references to "appropriate high-level Treasury official" and "appropriate regional counsel."

In mandating the restructuring of the IRS under RRA 1998, Congress realized that certain positions within the IRS would be eliminated as a result of transitioning from a geographic structure to a structure based on nationwide jurisdiction of similar types of taxpayers. Accordingly, Congress included a savings provision in RRA 1998. Section 1001(b) provides, "All orders, determinations, rules, regulations * * * and other administrative actions * * * which are in effect at the time this section takes effect * * * shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked in accordance with law by * * * the Secretary of the Treasury [or] the Commissioner of Internal Revenue * * *." This provision keeps in effect regulations that make reference to officers whose positions no longer exist. The legislative history of RRA 1998 at H.R. Conf. Rep. No. 105-599, 105th Cong., 2d Sess. 195 (1998) explains that "[t]he legality of IRS actions will not be affected pending further appropriate statutory changes relating to such a reorganization (e.g., eliminating statutory references to obsolete positions)." Accordingly, the Treasury Regulations under section 7611 have remained in effect notwithstanding their references to the positions of Regional Commissioner, Regional Counsel, and Assistant Commissioner (Employee Plans and Exempt Organizations), positions that were eliminated by the reorganization. Delegation Order 193 (Rev. 6) (11/08/2000) provides in part that actions previously delegated to

Regional Commissioners by Treasury Regulations (par. 7) are now delegated to “Assistant Deputy Commissioners, Division Commissioners; Chiefs; and Directors, Submission Processing Field, Compliance Services Field, and Accounts Management Field.” In the Internal Revenue Manual (“IRM”), the IRS designated the Director, Exempt Organizations Examinations as the appropriate high-level Treasury official for purposes of section 7611. See IRM § 4.76.7.

Recent litigation has challenged the IRS’s interpretation of the term “appropriate high-level Treasury official” following the reorganization. See *United States v. Living Word Christian Center*, Civil No. 08–mc–37, D.C. Minn. (Jan. 30, 2009) (“*LWCC*”). In particular, concern has been expressed about the need for an update to the regulations in light of the statutorily mandated reorganization and the elimination of internal revenue regions.

In *LWCC*, the District Court for the District of Minnesota ruled that the Director, Exempt Organizations Examinations is not an appropriate high-level Treasury official to make the “reasonable belief” determination required before the IRS may commence a church tax inquiry under section 7611. *LWCC* at 2. The district court concluded that the Director, Exempt Organizations Examinations is not an appropriate high-level Treasury official within the meaning of section 7611(h) because that official does not have a comparable breadth of responsibility to a regional commissioner nor as high a position within the IRS. Although the IRS disagrees with the district court’s reasoning and conclusion in *LWCC*, the IRS acknowledges that it would be beneficial to revise the regulations in light of the changes in IRS organization made in the wake of RRA 1998 to clarify who is an appropriate high-level Treasury official for purposes of section 7611. Further, the IRS recognizes the significance of the special procedural requirements for church tax inquiries and examinations. These proposed regulations assign responsibility for making the determinations required under section 7611(a) to the Director, Exempt Organizations.

Explanation of Provisions

These proposed regulations eliminate references to the positions of Regional Commissioner and Regional Counsel under the existing regulations and give responsibilities formerly assigned to these now defunct positions to the Director, Exempt Organizations and the Division Counsel/Associate Chief Counsel, Tax Exempt and Government

Entities, respectively. In addition, these proposed regulations eliminate references to the position of Assistant Commissioner (Employee Plans and Exempt Organizations) under the existing regulations and give responsibilities formerly assigned to that position to the Commissioner, Tax Exempt and Government Entities or the Deputy Commissioner, Tax Exempt and Government Entities.

Reasonable Belief and Inquiry Notice Requirement

With respect to the initiation of the church tax inquiry process, Treas. Reg. § 301.7611–1 Q1–A1 provides that a “Regional Commissioner (or higher Treasury official)” is the appropriate high-level Treasury official for purposes of this reasonable belief requirement. Similarly, Treas. Reg. § 301.7611–1 Q7–A7 states, “Repeated (two or more) failures by a church or its agents to reply to routine requests * * * will be considered by the appropriate Internal Revenue Service Regional Commissioner to be a reasonable basis for commencement of a church tax inquiry under the church tax inquiry and examination procedures of section 7611.” In addition, Treas. Reg. § 301.7611 Q9–A9 requires a Regional Commissioner to provide written notice to the church of the beginning of an inquiry.

These proposed regulations eliminate references to the Regional Commissioner and instead provide that the Director, Exempt Organizations is the “appropriate high-level Treasury official” for purposes of the reasonable belief and inquiry notice requirements of Treas. Reg. § 301.7611–1 Q1–A1, Q7–A7, and Q9–A9. The Director, Exempt Organizations is a senior executive who reports to the Commissioner/Deputy Commissioner, Tax Exempt and Government Entities Division, and who is responsible for planning, managing, directing and executing nationwide activities for Exempt Organizations. See IRM § 1.1.23.5 for a comprehensive description of these activities.

Examination Notice Requirement

Under section 7611(b)(2) and Treas. Reg. § 301.7611–1 Q10–A10, a church tax examination cannot be commenced without first providing written notice of such examination to the church and to the “appropriate Regional Counsel” at least 15 days before the IRS begins the church tax examination. The regulation allows the Regional Counsel to file an advisory objection to the examination within this same 15-day period.

These proposed regulations amend Treas. Reg. § 301.7611–1 Q10–A10 by

substituting Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities, for each occurrence of Regional Counsel. These proposed regulations further specify that before the notice of examination is provided to the church, a copy of the notice must be provided to the Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities.

Revocation of Exemption or of Church Status

Section 7611(d)(1) and Treas. Reg. § 301.7611–1 Q11–A11 require the Regional Counsel to approve, in writing, certain final determinations that are within the scope of section 7611 and adversely affect the tax-exempt status or increase any tax liability of a church. Further, prior to such adverse action, section 7611(d) requires Regional Counsel to determine, in writing, that there has been substantial compliance with the requirements of section 7611, when applicable.

These proposed regulations amend Treas. Reg. § 301.7611–1 Q11–A11 by providing that the Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities, is the official responsible for complying with the written determination and approval requirements of section 7611(d)(1).

Limitations on Period of Assessment

Section 7611(d)(2) and Treas. Reg. § 301.7611–1 Q15–A15 provide special limitation periods for church tax liabilities. These special rules are not to be construed to increase an otherwise applicable limitation period. Treas. Reg. § 301.7611–1 Q15–A15 states that, for purposes of section 7611(d)(2)(A), that is, the statute of limitations applicable to liabilities arising from church tax examinations, a church is determined not to be a church exempt from tax when the appropriate Regional Commissioner approves, in writing, the completed findings of the examining agent that the organization is not a church exempt from tax for one or more of the three most recently completed taxable years ending before the examination notice date. The regulation also states that the Regional Commissioner cannot delegate this approval to a subordinate official. Further, the completed findings of the examining agent, which are approved by the appropriate Regional Commissioner, are not considered a final revenue agent’s report (defined in section 7611(g)).

These proposed regulations substitute the Director, Exempt Organizations for the appropriate Regional Commissioner

for purposes of Treas. Reg. § 301.7611–1 Q15–A15.

Multiple Examinations

Consistent with the language of section 7611(f)(1) prior to enactment of RRA 1998, Treas. Reg. § 301–7611–1 Q16–A16 provides that the Assistant Commissioner (Employee Plans and Exempt Organizations) is responsible for providing the written approval necessary to begin a second inquiry or examination of a church. These proposed regulations provide that the Commissioner, Tax Exempt and Government Entities or the Deputy Commissioner, Tax Exempt and Government Entities is responsible for approving second inquiries and examinations under section 7611(f).

Remedies for Violation of Section 7611

Section 7611(e) and Treas. Reg. § 301.7611–1 Q17–A17 provide that, if there has not been substantial compliance with certain requirements in section 7611, including the notice requirements of section 7611(a) and (b), the exclusive remedy for such noncompliance is a stay in an enforcement proceeding to compel compliance with a summons with respect to the inquiry or examination. The stay continues until the court finds that all practicable steps to correct the noncompliance have been taken. Treas. Reg. § 301.7611–1 Q17–A17 further states that failure of the Regional Commissioner to approve an inquiry may not be raised as a defense or as an affirmative ground for relief in a summons proceeding or any other judicial proceeding other than as specifically set forth in the regulation.

These proposed regulations amend Treas. Reg. § 301.7611–1 Q17–A17 to replace each reference to Regional Commissioner with Director, Exempt Organizations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. 601) does not apply.

Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Benjamin Akins and Monice Rosenbaum of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 301.7611–1, each entry in the table, undesignated paragraphs in the “Old Paragraph” column are designated as new paragraphs in the “New Paragraph” column to read as follows:

Old paragraph	New paragraph
§ 301.7611–1 A–5 first undesignated paragraph.	§ 301.7611–1 A–5 paragraph (a).
§ 301.7611–1 A–5 second undesignated paragraph.	§ 301.7611–1 A–5 paragraph (b).

Old paragraph	New paragraph
§ 301.7611–1 A–6 first undesignated paragraph.	§ 301.7611–1 A–6 paragraph (a).
§ 301.7611–1 A–9 first undesignated paragraph.	§ 301.7611–1 A–9 paragraph (a).
§ 301.7611–1 A–9 second undesignated paragraph.	§ 301.7611–1 A–9 paragraph (b).
§ 301.7611–1 A–10 first undesignated paragraph.	§ 301.7611–1 A–10 paragraph (a).
§ 301.7611–1 A–10 second undesignated paragraph.	§ 301.7611–1 A–10 paragraph (b).
§ 301.7611–1 A–10 third undesignated paragraph.	§ 301.7611–1 A–10 paragraph (c).
§ 301.7611–1 A–10 fourth undesignated paragraph.	§ 301.7611–1 A–10 paragraph (d).
§ 301.7611–1 A–10 fifth undesignated paragraph.	§ 301.7611–1 A–10 paragraph (e).
§ 301.7611–1 A–11 first undesignated paragraph.	§ 301.7611–1 A–11 paragraph (a).
§ 301.7611–1 A–11 second undesignated paragraph.	§ 301.7611–1 A–11 paragraph (b).
§ 301.7611–1 A–11 third undesignated paragraph.	§ 301.7611–1 A–11 paragraph (c).
§ 301.7611–1 A–13 first undesignated paragraph.	§ 301.7611–1 A–13 paragraph (a).
§ 301.7611–1 A–13a first undesignated paragraph.	§ 301.7611–1 A–13a paragraph (a).
§ 301.7611–1 A–14 first undesignated paragraph.	§ 301.7611–1 A–14 paragraph (a).
§ 301.7611–1 A–14 second undesignated paragraph.	§ 301.7611–1 A–14 paragraph (b).
§ 301.7611–1 A–15 first undesignated paragraph.	§ 301.7611–1 A–15 paragraph (a).
§ 301.7611–1 A–15 second undesignated paragraph.	§ 301.7611–1 A–15 paragraph (b).
§ 301.7611–1 A–15 third undesignated paragraph.	§ 301.7611–1 A–15 paragraph (c).
§ 301.7611–1 A–15 fourth undesignated paragraph.	§ 301.7611–1 A–15 paragraph (d).
§ 301.7611–1 A–15 fifth undesignated paragraph.	§ 301.7611–1 A–15 paragraph (e).
§ 301.7611–1 A–15 sixth undesignated paragraph.	§ 301.7611–1 A–15 paragraph (f).
§ 301.7611–1 A–15 seventh undesignated paragraph.	§ 301.7611–1 A–15 paragraph (g).
§ 301.7611–1 A–16 first undesignated paragraph.	§ 301.7611–1 A–16 paragraph (a).
§ 301.7611–1 A–17 first undesignated paragraph.	§ 301.7611–1 A–17 paragraph (a).

§ 301.7611-1 [Amended]

Par. 3. For each section listed in the table, remove the language in the

“Remove” column and add in its place the language in the “Add” column as set forth below:

Section	Remove	Add
§ 301.7611-1 A-1 first sentence	appropriate Regional Commissioner (or higher Treasury official).	Director, Exempt Organizations.
§ 301.7611-1 A-7 first sentence	appropriate Internal Revenue Service Regional Commissioner.	Director, Exempt Organizations.
§ 301.7611-1 A-9 first sentence	appropriate Regional Commissioner	Director, Exempt Organizations.
§ 301.7611-1 A-10 first sentence	appropriate Regional Counsel	Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities.
§ 301.7611-1 A-10 paragraph (b) first sentence	At the time the notice of examination (second notice) is provided to the church, a copy of the same notice will be provided to the appropriate Regional Counsel.	Before the notice of examination (second notice) is provided to the church, a copy of the same notice will be provided to the Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities.
§ 301.7611-1 A-10 paragraph (b) second sentence.	Regional Counsel	Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities.
§ 301.7611-1 A-11 paragraph (c) first, second and third sentences.	Regional Counsel	Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities.
§ 301.7611-1 A-15 paragraph (c) first and third sentences.	appropriate Regional Commissioner	Director, Exempt Organizations.
§ 301.7611-1 A-15 paragraph (c) second sentence.	Regional Commissioner	Director, Exempt Organizations.
§ 301.7611-1 A-16 first sentence	Assistant Commissioner (Employee Plans and Exempt Organizations).	Commissioner, Tax Exempt and Government Entities or the Deputy Commissioner, Tax Exempt and Government Entities.
§ 301.7611-1 A-16 second sentence	Assistant Commissioner's approval	approval of the Commissioner, Tax Exempt and Government Entities or the Deputy Commissioner, Tax Exempt and Government Entities.
§ 301.7611-1 A-16 paragraph (a) second sentence.	Assistant Commissioner (Employee Plans and Exempt Organizations).	Commissioner, Tax Exempt and Government Entities or the Deputy Commissioner, Tax Exempt and Government Entities.
§ 301.7611-1 A-17 first sentence	Regional Commissioner	Director, Exempt Organizations.
§ 301.7611-1 A-17 paragraph(a) third sentence	Regional Commissioner	Director, Exempt Organizations.
§ 301.7611-1 A-17 paragraph (a) fourth sentence.	appropriate Regional Commissioner's belief ...	belief of the Director, Exempt Organizations.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9-18659 Filed 7-31-09; 4:15 pm]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2008-0379; FRL-8940-3]

Approval and Promulgation of Maintenance Plan for Carbon Monoxide; State of Arizona; Tucson Air Planning Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act, EPA is proposing to approve two State implementation plan revisions submitted by the State of Arizona. The State submitted the 2008 Revision to the Carbon Monoxide Limited Maintenance Plan for the Tucson Air Planning Area on July 10, 2008. EPA is proposing to

approve the 2008 Limited Maintenance Plan because it provides for the maintenance of the carbon monoxide national ambient air quality standard within the Tucson Air Planning Area through the second 10-year portion of the maintenance period. EPA is also proposing to approve a statutory provision that was submitted by the State on June 22, 2009 as a revision to the State implementation plan and that extends the life of the State's vehicle emissions inspection program through the end of 2016. EPA is taking this action pursuant to those provisions of the Clean Air Act that obligate the Agency to take action on submittals of revisions to State implementation plans. The effect of this action would be to make certain commitments related to maintenance of the carbon monoxide standard in the Tucson Air Planning Area Federally enforceable as part of the Arizona State implementation plan.

DATES: Written comments must be received at the address below on or before September 4, 2009.

ADDRESSES: Submit comments, identified by docket number EPA-R09-

OAR-2008-0379, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* robin.marty@epa.gov.

3. *Mail or deliver:* Marty Robin (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

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

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Marty Robin, Air Planning Office (AIR-2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 972-3961.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we”, “us”, and “our” refer to EPA.

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I. Summary of EPA’s Action

Under the Clean Air Act (CAA or “Act”), EPA is proposing to approve the

2008 Revision to the Carbon Monoxide Limited Maintenance Plan for the Tucson Air Planning Area (TAPA) (“2008 CO Maintenance Plan”), adopted by the Pima Association of Governments (PAG) on June 26, 2008, and submitted by the Arizona Department of Environmental Quality (ADEQ) as a revision to the Arizona State Implementation Plan (SIP) on July 10, 2008. In the 1970s, TAPA was designated as a nonattainment area for the carbon monoxide (CO) national ambient air quality standard (NAAQS). In 2000, in light of improved ambient CO conditions and implementation of permanent CO-emissions-reducing measures, EPA approved ADEQ’s request to redesignate the TAPA to attainment for the CO NAAQS and approved the 1996 Carbon Monoxide Limited Maintenance Plan for the Tucson Air Planning Area (“1996 CO Maintenance Plan”), which provides for maintenance of the standard for the first 10 years after redesignation. The 2008 CO Maintenance Plan submitted by ADEQ on July 10, 2008 is designed to maintain the CO standard within the TAPA for a second ten-year period beyond redesignation, and we are proposing to approve the 2008 CO Maintenance Plan because we conclude that it meets all applicable requirements under CAA sections 110 and 175A.

As a general matter, the 2008 CO Maintenance Plan relies on the same control measures and contingency provisions to maintain the CO NAAQS during the second ten-year portion of the maintenance period as the 1996 CO Maintenance Plan relied upon for the first 10-year period. One of the control measures, the State’s vehicle emissions inspection (VEI) program, is subject to a legislative sunset clause. To provide for the continuation of the VEI program, on June 22, 2009, ADEQ submitted, and EPA is proposing to approve, a SIP revision containing a statutory provision that extends the life of the State’s VEI program through the end of 2016. While the second 10-year maintenance period extends until 2020, based on the Arizona’s Legislature’s support for the VEI program in the past, we expect the Legislature to extend the life of the VEI program once again prior to 2016.

II. Background

Carbon monoxide (CO) is a colorless and odorless gas, formed when carbon in fuel is not burned completely. It is a component of motor vehicle exhaust, which contributes about 60 percent of all CO emissions nationwide. High concentrations of CO generally occur in areas with heavy traffic congestion. Peak CO concentrations typically occur

during the colder months of the year when CO automotive emissions are greater and nighttime inversion conditions (where air pollutants are trapped near the ground beneath a layer of warmer air) are more frequent. CO enters the bloodstream through the lungs and reduces oxygen delivery to the body’s organs and tissues. The health threat from levels of CO sometimes found in the ambient air is most serious for those who suffer from cardiovascular disease, such as angina pectoris.

Under the CAA, as amended in 1970, EPA promulgated NAAQS to protect public health and welfare for six criteria pollutants, including CO. EPA set the NAAQS for CO at 35 parts per million (ppm), one-hour average, and 9 ppm, eight-hour average. The CO NAAQS remain the same today. *See* 40 CFR 50.8. Under the CAA, States are required to adopt and submit plans to implement, maintain, and enforce the NAAQS throughout the State. Such plans are referred to as State Implementation Plans (SIPs).

Pursuant to the CAA, as amended in 1977, EPA designated all areas of the country as attainment, nonattainment, or unclassifiable for each of the NAAQS. EPA designated the TAPA as nonattainment for the CO NAAQS although the specific boundaries of the area have changed over time. *See* 43 FR 8962, at 8968 (March 3, 1978); 44 FR 16388, at 16392 (March 19, 1979); and 51 FR 27843, at 27844 (August 4, 1986). The current boundary of the TAPA defined by township and range as is set forth in the CO table contained in 40 CFR 81.303. Pursuant to the CAA as amended in 1990, TAPA’s nonattainment area designation was carried forward by operation of law, but TAPA was not further classified under the 1990 CAA Amendments because no CO violations had been recorded in the area during 1988 and 1989. *See* 56 FR 56694, at 56716 (November 6, 1991).

In the mid-1990s, in response to the full implementation of a number of CO reduction measures and an extended period during which no CO violations were monitored in the TAPA, ADEQ requested redesignation of TAPA to “attainment” for the CO NAAQS. For EPA to approve a redesignation request, among other criteria, a State must submit (and EPA approve) a maintenance plan that covers the period extending 10 years after redesignation. *See* CAA sections 107(d)(3)(E)(iv) and 175A. EPA has published guidance for States on developing such maintenance

plans.¹ For certain “not classified” CO nonattainment areas (*i.e.*, those with design values² at or below 85% of the standard, or 7.65 ppm, eight-hour average), such as the TAPA, EPA interprets the CAA to allow States to develop more limited maintenance plans, referred to as Limited Maintenance Plans (LMPs).³

As the designated metropolitan planning organization (MPO) for the Tucson region, the Pima Association of Governments (PAG) is responsible under Arizona law for development of nonattainment and maintenance plans for the TAPA. PAG opted to develop an LMP for the TAPA, and in 1997, ADEQ submitted PAG’s 1996 Carbon Monoxide Limited Maintenance Plan for the Tucson Air Planning Area (“1996 CO Maintenance Plan”) to EPA as a revision to the Arizona SIP. In 2000, EPA approved the 1996 CO Maintenance Plan and the State’s request to redesignate the TAPA to attainment for the CO NAAQS. See 65 FR 36353 (June 8, 2000), as corrected at 65 FR 50651 (August 21, 2000) and 69 FR 12802 (March 18, 2004). In connection with our approval of the 1996 CO Maintenance Plan, we approved various statutory provisions providing for the continuation of the control measures and the authority for State agencies to implement the contingency measures upon which the maintenance plan relies. One of the approved statutory provisions (*i.e.*, Arizona Revised Statutes (ARS) section 41–3009.01) extended the life of the State’s VEI program through the end of 2008. As the first 10-year maintenance plan, the 1996 CO Maintenance Plan was intended to provide for maintenance of the CO NAAQS in the TAPA through mid-2010.

Under CAA section 175A(b), States must submit a revision to the maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for 10 years following the end of the first 10-year period. In recognition of the continuing record of monitoring data showing ambient CO concentrations in the TAPA well below the LMP eligibility threshold (*i.e.*, 7.65 ppm), PAG chose the LMP

option again for the development of a second 10-year CO maintenance plan. On June 26, 2008, PAG adopted the second 10-year CO maintenance plan, entitled “2008 Revision to the Carbon Monoxide Limited Maintenance Plan for the Tucson Air Planning Area (for 2010)” (herein referred to as the “2008 CO Maintenance Plan”), and on July 10, 2008, ADEQ submitted the 2008 CO Maintenance Plan to EPA as a revision to the Arizona SIP.

On June 22, 2009, to extend the life of the VEI program through most of the second 10-year period, ADEQ submitted a statutory provision (ARS section 41–3017.01) as a revision to the Arizona SIP. ARS section 41–3017.01 extends the life of the State’s VEI program until the end of 2016.

The 2008 CO Maintenance Plan and VEI-related statutory provision are the subjects of today’s proposed rule.

III. Arizona’s SIP Submittals

On July 10, 2008, the ADEQ Director adopted and submitted the 2008 CO Maintenance Plan to EPA as a revision to the Arizona SIP. The submittal includes the maintenance plan and appendices as well as certification of adoption of the plan by PAG. Appendices to the plan include inventory information, certain Arizona statutes, an updated interagency memorandum of agreement, a letter from ADEQ regarding the continuation of the VEI program, PAG’s “Air Quality Report—2007 National, State and Tucson Region Trends,” resolutions from the PAG jurisdictions concerning priorities for transportation improvement programs (that had been previously submitted and approved by EPA in connection with the 1996 CO Maintenance Plan), and documentation of notice, hearing, and public participation prior to adoption of the plan by the PAG Regional Council on June 26, 2008.

The 2008 CO Maintenance Plan does not include any additional measures but relies on the same strategy as the 1996 CO Maintenance Plan to provide for maintenance of the CO NAAQS through 2020. Specifically, the measures upon which the second 10-year maintenance plan for the TAPA relies include the continuation of the Federal Motor Vehicle Control Program (FMVCP), the State’s VEI program, the State’s wintertime oxygenated gasoline program (1.8% oxygen content), and to a lesser extent, PAG’s Trip Reduction Program and Pima County Department of Environmental Quality’s (PDEQ’s) voluntary no-drive days program. The 2008 CO Maintenance Plan also carries forward essentially the same

contingency plan as contained in the 1996 CO Maintenance Plan.

On June 22, 2009, ADEQ submitted a supplement to the 2008 CO Maintenance Plan that includes ARS section 41–3017.01, a statutory provision that extends the life of the State’s VEI program until the end of 2016, as a revision to the Arizona SIP. In addition to the statutory provision itself, ADEQ’s June 22, 2009 submittal package includes evidence of public notice, public hearing, and adoption.

IV. EPA’s Evaluation of Arizona’s SIP Submittals

A. Procedural Requirements

CAA section 110(a)(2) and 110(l) require revisions to a SIP to be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of a notice by prominent advertisement in the relevant geographic area of proposed SIP revisions, at least a 30-day public comment period, and an opportunity for a public hearing.

Documentation in Appendix H of the 2008 CO Maintenance Plan shows that, on March 27, 2008, PAG published a notice of a 30-day comment period and a public hearing in newspapers of general circulation in the Tucson area. On April 29, 2008, PAG held a public hearing on the 2008 CO Maintenance Plan. No oral or written comments were submitted, and on June 26, 2008, the PAG Regional Council adopted the plan. Then, in accordance with State law, on July 10, 2008, ADEQ adopted and submitted the 2008 CO Maintenance Plan to EPA as a revision to the Arizona SIP. The process followed by PAG and ADEQ in adopting the 2008 CO Maintenance Plan complies with the procedural requirements for SIP revisions under CAA section 110 and EPA’s implementing regulations.

Documentation in ADEQ’s June 22, 2009 SIP submittal shows that appropriate notice, hearing, and adoption procedures were also followed by PAG and ADEQ with regards to the adoption and submittal of the SIP revision containing the statutory provision (ARS section 41–3017.01) that extends the life of the VEI program through the end of 2016.

B. Substantive Requirements

EPA has reviewed the 2008 CO Maintenance Plan, which provides the second 10-year update to the CO maintenance plan for the TAPA, as required under CAA section 175A(b). The following is a summary of the

¹ Calcagni, John, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, “Procedures for Processing Requests to Redesignate Areas to Attainment,” September 4, 1992.

² The design value is the highest of the second high eight-hour concentrations observed at any site in the area.

³ Paise, Joseph W., Group Leader, Integrated Policy and Strategies Group, EPA Office of Air Quality Planning and Standards, “Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas,” October 6, 1995.

requirements and EPA's evaluation of how each requirement is met.

1. Attainment Emissions Inventory

For maintenance plans, a State should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A State should

develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For CO, the inventory should reflect typical wintertime conditions.

The 2008 CO Maintenance Plan includes a CO attainment inventory for the TAPA that reflects typical wintertime conditions in year 2008.

Table 1 presents a summary of the

inventory for 2008 contained in the maintenance plan. As shown in table 1, the 2008 Maintenance Plan estimates that on-road mobile sources contribute approximately 63% to the total CO inventory within the TAPA in 2008 and nonroad mobile contribute approximately 33%. Stationary point and area sources contribute less than 4%.

TABLE 1—2008 TYPICAL WINTER DAY CO EMISSIONS FOR THE TUCSON REGION (TONS/DAY)

Sources	CO (tons/day)	Percent of total CO emissions
Point	9.04	1.66
Area	9.57	1.75
Nonroad Mobile	182.62	33.46
On-road Mobile	344.56	63.13
TOTAL	545.79	

Source: 2008 CO Maintenance Plan, page 6.

Appendix A of the 2008 CO Maintenance Plan describes the methods, models, and assumptions used to develop the attainment inventory. As described in appendix A, for stationary point and area sources, PAG generally relied upon the results of a 2001 study of actual emissions in 2000 to project emissions from such sources in 2008. However, with respect to one particular area source, residential wood burning, PAG updated the baseline estimates to reflect more accurate activity level estimates. Nonroad mobile source emissions were, in part, estimated using EPA's NONROAD2005 emission model (agricultural, commercial and mining, industrial and recreational equipment, and commercial and residential lawn and garden equipment). For on-road mobile sources, PAG used the latest EPA motor vehicle emissions model, MOBILE6.2, and the latest planning assumptions regarding vehicle type, vehicle activity, and vehicle speeds to estimate vehicular emissions for 2008. PAG's estimates for vehicles reflect 2007 winter meteorological conditions, local wintertime gasoline specifications, such as minimum oxygen content, the State's VEI program, and the averaging of high-altitude and low-altitude MOBILE6.2 emissions factors.

Based on our review of the methods, models, and assumptions used by PAG

to develop the CO estimates, we find that the 2008 Maintenance Plan includes a comprehensive, reasonably accurate inventory of actual CO emissions in an attainment year (2008), and conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

2. Maintenance Demonstration

The maintenance plan demonstration requirement is considered to be satisfied for areas that were once nonclassifiable for CO (e.g., TAPA) if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (7.65 ppm or 85 percent of the eight-hour CO NAAQS). PAG has opted to develop an LMP to fulfill the TAPA second 10-year maintenance period requirement under CAA section 175A(b).

Under the LMP option, there is no requirement to project emissions over the maintenance period. EPA believes if the area begins the first 10-year maintenance period at or below 7.65 ppm, eight-hour average (85 percent of the NAAQS), the air quality, along with the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate

assurance of maintenance over the initial 10-year maintenance period.

The same holds true for the second 10-year maintenance period. If the area initially qualified for the LMP option, and the monitoring data over the first 10-year maintenance period continues to meet the air quality criteria for limited maintenance areas (7.65 ppm or 85 percent of the NAAQS), then we believe that the air quality, along with the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the second 10-year maintenance period.

Table 2 presents the second highest 8-hour CO concentration at the six CO monitoring sites in the TAPA over the 1998–2008 period. Two of the six monitoring sites, the 22nd Street/Alvernon and Golf Links/Kolb sites, are considered microscale and record concentrations in the vicinities of heavily-traveled intersections. As shown in table 2, 2nd-high CO concentrations, which form the basis for the design value in an area, have all been well below the LMP option threshold of 7.65 ppm at all of the monitoring stations over the entire first 10-year maintenance period. (The current design value is 2.0 ppm based on 2006–2008 data.) Moreover, the 2008

⁴ The State's VEI program, as approved in the Arizona SIP, is authorized through the end of 2008. In 2007, the State Legislature acted to extend the program through the end of 2016 (see ARS section 41–3017.01). As noted above, on June 22, 2009, ADEQ submitted ARS 41–3017.01 to EPA as a SIP revision, and we are proposing to approve the VEI program extension in this notice. We recognize that 2016 is 3½ years short of the end of the second 10-

year maintenance period. However, in a letter dated March 10, 2008, and included as appendix D of the 2008 CO Maintenance Plan, ADEQ explains why it believes that the VEI program will continue beyond 2016 notwithstanding the sunset date. First, ADEQ states that the VEI program is recognized as an integral component for air quality plans in both the Phoenix and Tucson areas and that continuation of the program is important to achieve and maintain

the NAAQS in those areas. Second, ADEQ notes that the Arizona Legislature has consistently supported the program since its inception in 1976, and thus, can reasonably be expected to do so in the future. EPA believes that ADEQ's rationale provides a reasonable basis for EPA to assume that the VEI program will be extended when it expires at the end of 2016.

CO Maintenance Plan essentially maintains existing controls, including the FMVCP, the State's VEI program,⁴

the wintertime oxygenated gasoline program, and contingency provisions.

TABLE 2—SECOND HIGHEST EIGHT-HOUR CO CONCENTRATIONS (PPM) AT THE SIX CO MONITORING SITES IN THE TAPA, 1998–2008

Year	Downtown	22nd/ Craycroft	22nd/ Alvernon	Children's Park	Cherry/ Glenn	Golf Links/ Kolb
1998	3.9	2.3	4.0	1.7	3.1	ND
1999	3.2	2.0	3.8	1.9	3.4	ND
2000	3.5	2.4	4.7	1.9	3.3	ND
2001	2.5	1.7	2.9	1.7	2.6	ND
2002	2.3	1.9	2.5	1.6	2.3	2.6
2003	2.7	1.9	2.6	1.4	2.7	2.2
2004	2.5	1.6	2.0	1.4	2.2	2.1
2005	1.7	1.5	2.1	1.1	2.4	2.1
2006	1.2	1.4	1.8	1.0	2.0	1.6
2007	1.4	1.2	1.9	1.0	1.5	1.3
2008	1.0	1.1	1.3	0.9	1.5	1.2

Source: Air Quality System, Quick Look Summary Report, March 17, 2009.

Therefore, the TAPA continues to be eligible for the LMP option, and the long record of low monitored CO concentrations, together with the continuation of existing CO emissions control programs, adequately demonstrate that the TAPA will maintain the CO NAAQS through the second 10-year maintenance period and beyond.

3. Monitoring Network and Verification of Continued Attainment

EPA reviews the CO monitoring network that PDEQ operates and maintains, in accordance with 40 CFR part 58. This network is consistent with the ambient air monitoring network assessment and plan developed by PDEQ that is submitted annually to EPA and that follows a public notification and review process. EPA has reviewed and approved the 2007 Ambient Air Monitoring Network Assessment and Plan ("2007 Annual Network Plan").⁵

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, PDEQ's monitoring network in the TAPA has been approved by EPA in accordance with 40 CFR part 58, and the area has committed to continue to maintain a network in accordance with EPA requirements. For

further details on monitoring, the reader is referred to the 2007 PDEQ Annual Network Plan found at: <http://www.pima.gov/deq/air/pdf/2007NetworkReview.pdf> as well as EPA's approval letter for the 2007 Annual Network Plan, which can be found in the docket for today's action. We believe PDEQ's monitoring network is adequate to verify continued attainment of the CO NAAQS in the TAPA.

4. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or promptly remedy any NAAQS violations that might occur during the maintenance period.

The 2008 CO Maintenance Plan carries forward the same contingency provisions, only slightly modified, that were included in the 1996 CO Maintenance Plan, and that we found acceptable when we approved the earlier maintenance plan. In short, and much like the 1996 CO Maintenance Plan, the 2008 CO Maintenance Plan identifies events, including measurements of certain threshold CO concentrations or projections of high CO concentrations based on periodic modeling analyses, that trigger a requirement to conduct specific types of

field studies and technical analyses, followed by adoption and implementation of contingency measures as needed to address the sources causing the elevated CO conditions. The 2008 CO Maintenance Plan lists potential contingency measures such as transportation system management improvements and incremental increases in the wintertime gasoline oxygen content, among others.

The only significant difference between the contingency provisions in the approved 1996 CO Maintenance Plan and the contingency provisions in the submitted 2008 CO Maintenance Plan relates to the use of a portable CO monitor. In the 1996 plan, the use of a portable CO monitor was not made contingent upon the occurrence of a particular event, but rather was a part of ongoing monitoring and modeling efforts to verify continued attainment. In contrast, the 2008 CO Maintenance Plan commits to the use of a portable CO monitor contingent upon the occurrence of certain monitored levels or a determination by PAG that the agency's periodic modeling analyses have raised a reasonable probability of CO violations at hot-spot locations within the TAPA. In view of the low monitored CO levels in the TAPA, we find acceptable the reduced role for the portable CO monitor, and believe that the contingency provisions in the 2008

⁴ The State's VEI program, as approved in the Arizona SIP, is authorized through the end of 2008. In 2007, the State Legislature acted to extend the program through the end of 2016 (see ARS section 41–3017.01). As noted above, on June 22, 2009, ADEQ submitted ARS 41–3017.01 to EPA as a SIP revision, and we are proposing to approve the VEI program extension in this notice. We recognize that 2016 is 3½ years short of the end of the second 10-year maintenance period. However, in a letter dated

March 10, 2008, and included as appendix D of the 2008 CO Maintenance Plan, ADEQ explains why it believes that the VEI program will continue beyond 2016 notwithstanding the sunset date. First, ADEQ states that the VEI program is recognized as an integral component for air quality plans in both the Phoenix and Tucson areas and that continuation of the program is important to achieve and maintain the NAAQS in those areas. Second, ADEQ notes that the Arizona Legislature has consistently

supported the program since its inception in 1976, and thus, can reasonably be expected to do so in the future. EPA believes that ADEQ's rationale provides a reasonable basis for EPA to assume that the VEI program will be extended when it expires at the end of 2016.

⁵ See EPA letter dated November 10, 2008, to Ursula Kramer, PDEQ, from Sean Hogan, EPA Region 9, in the docket for today's action.

CO Maintenance Plan meet the requirements of CAA section 175A(d).

C. Conclusion

We conclude that the 2008 CO Maintenance Plan, as supplemented by the submittal of the statutory provision extending the VEI program, includes an acceptable update of the various elements of the initial EPA-approved 1996 CO Maintenance Plan (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and essentially carries forward all of the control measures and contingency provisions relied upon in the earlier plan. We also find that the TAPA, a former nonclassifiable CO nonattainment area, continues to qualify for the LMP option and that therefore the 2008 CO Maintenance Plan adequately demonstrates maintenance of the CO NAAQS through the documentation of monitoring data showing maximum CO levels less than 7.65 ppm, eight-hour average (85 percent of the NAAQS), and through the continuation of existing control measures. We believe the 2008 CO Maintenance Plan as supplemented, to be sufficient to provide for maintenance of the CO NAAQS in the TAPA over the second 10-year maintenance period (*i.e.*, through mid-2020) and thereby satisfy the requirements for such a plan under CAA section 175A(b). In light of the above, we are therefore proposing to approve ADEQ's submittal on July 10, 2008 of the 2008 CO Maintenance Plan, and ADEQ's submittal on June 22, 2009 of the statutory provision extending the life of the VEI program, as a revision to the Arizona SIP.

V. Transportation and General Conformity

Section 176(c) of the Act requires that all Federal actions conform to an applicable SIP. Conformity is defined in section 176(c) of the Act as conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. EPA has established criteria and procedures for Federal agencies to follow in determining conformity of their actions. EPA's rule governing transportation plans, programs, and projects approved or funded by the

Federal Highway Administration or Federal Transit Administration is referred to as the "transportation conformity" rule (*see* 40 CFR part 93, subpart A), and EPA's rule governing all other types of Federal agency actions is referred to as the "general conformity" rule (*see* 40 CFR part 93, subpart B).

The transportation conformity rule and the general conformity rule apply to nonattainment areas and former nonattainment areas, like TAPA, that have been redesignated as attainment and that are subject to a maintenance plan. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area.

While EPA's LMP option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP option, emissions budgets are treated as essentially not constraining for the length of the applicable maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, in LMP areas, EPA concludes that emissions need not be capped for the maintenance period. Therefore, in areas with approved LMPs, Federal actions requiring conformity determinations under the transportation conformity rule are considered to satisfy the "budget test" required in 40 CFR 93.118. Similarly, in these areas, Federal actions subject to the general conformity rule are considered to satisfy the "budget test" specified in 40 CFR 93.158(a)(5)(i)(A) of the rule.

While areas with maintenance plans approved under the LMP option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the applicable MPO or State must document and ensure that:

(a) Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113;

(b) Transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108;

(c) The MPO's interagency consultation procedures meet the applicable requirements of 40 CFR 93.105;

(d) Conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects

is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

(e) The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

(f) Projects do not cause or contribute to any new localized CO violations, in accordance with procedures specified in 40 CFR 93.123; and

(g) Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

We posted the 2008 Revision to the Carbon Monoxide Limited Maintenance Plan for the Tucson Air Planning Area on EPA's transportation conformity adequacy Web site on October 2, 2008 for 30 days and did not receive any comments on the adequacy of the plan. We believe that the 2008 CO Maintenance Plan demonstrates that it is unreasonable to expect that the area would experience enough growth in motor vehicle emissions for a violation of the CO NAAQS to occur and qualifies as an LMP, and on that basis, we are proposing to approve the 2008 CO Maintenance Plan for transportation conformity purposes. This determination waives the need for a motor vehicle emissions budget, although it does not relieve the area or the other transportation conformity requirements noted above. If finalized as proposed, PAG (the area's MPO), the Federal Highway Administration, and the Federal Transit Administration will not be required to satisfy the regional emissions analysis (with respect to CO) under 40 CFR 93.118 and/or 40 CFR 93.119 in determining the conformity of transportation plans, programs and projects in the TAPA. *See* 40 CFR 93.109(j).

VI. Proposed Action and Public Comment

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve two revisions of the Arizona SIP submitted by ADEQ. The first, submitted on July 10, 2008, includes the 2008 CO Maintenance Plan for the Tucson Air Planning Area, and the second, submitted on June 22, 2009, includes a statutory provision (ARS section 41-3017.01) extending the life of the VEI program through the end of 2016.

We are proposing to approve the 2008 CO Maintenance Plan because we find that it includes an acceptable update of the various elements of the initial EPA-approved 1996 CO Maintenance Plan (including emissions inventory, assurance of adequate monitoring and verification of continued attainment,

and contingency provisions), and essentially carries forward all of the control measures and contingency provisions relied upon in the earlier plan. We also find that the TAPA, a former nonclassifiable CO nonattainment area, continues to qualify for the LMP option and that therefore the 2008 CO Maintenance Plan adequately demonstrates maintenance of the CO NAAQS through documentation of monitoring data showing maximum CO levels less than 85% of the NAAQS and continuation of existing control measures. We believe the 2008 CO Maintenance Plan to be sufficient to provide for maintenance of the CO NAAQS in the TAPA over the second 10-year maintenance period and to thereby satisfy the requirements for such a plan under CAA section 175A(b). If finalized as proposed, our approval will make Federally enforceable the 2008 CO Maintenance Plan's contingency provisions, which are slightly modified from the corresponding provisions in the 1996 CO Maintenance Plan.

In connection with the 2008 CO Maintenance Plan, we are proposing to approve the statutory provision, ARS section 41-3017.01, that extends the life of the State's VEI program (applicable to the TAPA and Phoenix metropolitan areas) until the end of 2016, and that was submitted to EPA as a revision to the Arizona SIP on June 22, 2009, based on our expectation that the Arizona Legislature will extend the VEI program beyond 2016.

We also find that the 2008 CO Maintenance Plan qualifies for evaluation as an limited maintenance plan under our LMP policy in light of low monitored CO levels in the TAPA and therefore propose to approve the 2008 CO Maintenance Plan for transportation conformity purposes. If finalized as proposed, PAG (the area's MPO), the Federal Highway Administration, and the Federal Transit Administration will not be required to satisfy the regional emissions analysis under 40 CFR 93.118 and/or 40 CFR 93.119 in determining conformity of transportation plans and programs in the TAPA.

EPA is soliciting public comments on this document and on issues relevant to EPA's proposed action. We will accept comments from the public on this proposal for the next 30 days.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: July 21, 2009.

Kathleen H. Johnson,

Acting Regional Administrator, Region IX.

[FR Doc. E9-18693 Filed 8-4-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2009-0028; FRL-8939-5]

RIN 2060-AN46

National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing national emissions standards for control of hazardous air pollutants from the chemical preparations area source category. These proposed emissions standards for new and existing sources reflect EPA's proposed determination regarding the generally available control technology or management practices for the source category.

DATES: Comments must be received on or before September 4, 2009, unless a public hearing is requested by August 17, 2009. If a hearing is requested on the proposed rules, written comments must be received by September 21, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before September 4, 2009.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA-HQ-OAR-2009-0028, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Agency Web Site:* <http://www.epa.gov/oar/docket.html>. Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web Site.
- *E-mail:* a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2009-0028 in the subject line of the message.
- *Fax:* (202) 566-9744.
- *Mail:* Area Source NESHAP for Chemical Preparations Manufacturing

Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- **Hand Delivery:** EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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-2009-0028. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web Site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact

you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Area Source NESHAP for Chemical Preparations Manufacturing Docket, EPA/DC, 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 Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Johnson, Outreach and Information Division, Office of Air Quality Planning and Standards (C404-05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541-5124; *fax number:* (919) 541-0242; *e-mail address:* Johnson.warren@epa.gov.

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

- I. General Information
 - A. Does this action apply to me?
 - B. What should I consider as I prepare my comments to EPA?
 - C. Where can I get a copy of this document?
 - D. When would a public hearing occur?
- II. Background Information for Proposed Area Source Standards
 - A. What is the statutory authority and regulatory approach for the proposed standards?
 - B. What source categories are affected by the proposed standards?

- C. What are the production operations, emission sources, and available controls?
- D. What existing national standards apply to this source category?
- III. Summary of Proposed Standards
 - A. Do the proposed standards apply to my source?
 - B. When must I comply with the proposed standards?
 - C. What are the proposed standards?
 - D. What are the compliance requirements?
 - E. What are the notification, recordkeeping, and reporting requirements?
- IV. Rationale for this Proposed Rule
 - A. How did we select the source category?
 - B. How did we select the affected source?
 - C. How did we address metal HAP emissions in this rule?
 - D. How was GACT determined?
 - E. How did we select the compliance requirements?
 - F. Why did we decide to exempt this area source category from title V permitting requirements?
- V. Summary of Impacts of the Proposed Standards
 - A. What are the air impacts?
 - B. What are the cost impacts?
 - C. What are the economic impacts?
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- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by the proposed standards include:

Category	NAICS Code ¹	Examples of regulated entities
Spice and Extract Manufacturing	311942	Area source facilities that manufacture salt products containing trace mineral additives.
All other basic organic chemical manufacturing.	325199	Area source facilities that manufacture products containing metal compounds of chromium, lead, manganese, or nickel.
Paint and coating manufacturing	325510	Area source facilities that manufacture products containing metal compounds of chromium, lead, manganese, or nickel.

Category	NAICS Code ¹	Examples of regulated entities
All other miscellaneous chemical product and preparation manufacturing.	325998	Area source facilities that manufacture products containing metal compounds of chromium, lead, manganese, or nickel. These include, but are not limited to, fluxes, water treatment chemicals, rust preventatives and plating chemicals, concrete additives, gelatin, and drilling fluids.

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Chemical preparation operations described by the NAICS codes 325199 and 325510 may be subject to area source regulations for chemical manufacturing (40 CFR Subpart VVVVVV) or paint and allied products (40 CFR Subpart CCCCCC). To address this potential for overlap, the requirements specified in Subpart VVVVVV or Subpart CCCCCC, as applicable, supersede the requirements specified in this subpart. Therefore, if the particular chemical preparation operation is subject to regulation by either of these other area source rules, then the operation must comply with the requirements specified in Subpart VVVVVV or CCCCCC, as applicable, and not the requirements of the proposed chemical preparations area source regulation. To determine whether operations at your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.11579 of subpart BBBBBBBB (NESHAP for Area Sources: Chemical Preparations Industry). If you have any questions regarding the applicability of this action to a particular entity or operations at your facility, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA-HQ-OAR-2009-0028. 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.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by August 17, 2009, we will hold a public hearing on August 20, 2009. Persons interested in presenting oral testimony at the hearing, or inquiring as to whether a hearing will be held, should contact Ms. Christine Adams at (919) 541-5590 at least two days in advance of the hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for Proposed Area Source Standards

A. What is the statutory authority and regulatory approach for the proposed standards?

Section 112(d) of the Clean Air Act (CAA) requires us to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of hazardous air pollutants (HAP) that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any

single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP that, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999). Specifically, in the Integrated Urban Air Toxics Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the "30 urban HAP." Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We also implemented these requirements through the Integrated Urban Air Toxics Strategy. A primary goal of the Integrated Urban Air Toxics Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technology or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants." Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101-228, December 20, 1989), which describes GACT as:

* * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories, like this one, that have almost 40 percent of firms classified as small businesses according to the Small Business Administration (SBA) standards in 13

CFR 121.201. For this source category, small businesses are defined as those with fewer than 500 employees.¹

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices employed by those sources are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category being considered. Finally, as noted above, in determining GACT for a particular category of area sources, we consider the costs and economic impacts of using available control technologies and management practices on sources in that category.

We are proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for a number of source categories listed pursuant to section 112(c)(3) and (k) by October 15, 2009 (*Sierra Club v. Johnson*, no. 01–1537, D.D.C., March 2006).

B. What source categories are affected by the proposed standards?

We listed the chemical preparations manufacturing source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Integrated Urban Air Toxics Strategy. The decision to include this source category on the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. The chemical preparations source category was listed for its contributions toward meeting the 90 percent requirement for the following metal HAP: Compounds of chromium

(Cr), manganese (Mn), nickel (Ni) and lead (Pb), referred to hence forth in this preamble as “target HAP.”

This area source category comprises those establishments that conduct industrial operations that mix, mill, blend and/or extrude chemicals that contain the target HAP in their manufacturing processes during the production of chemical preparations. These manufacturing processes turn various dry and/or wet ingredients into chemical preparations. Chemical preparations, which are defined in the subpart, are a wide variety of compounds that may often be used as an intermediate in the manufacture of other products, such as fluxes and rubber compounding chemicals, or sold as a product, such as water treatment chemicals and drilling fluids. Chemical reactions typically do not occur in the manufacturing of chemical preparations. Emission points associated with these types of operations include sources such as Banbury mixers, mixing or blending tanks, extruders, and roll mills.

This source category does not include those establishments that are covered by other area source NESHAP, such as paint and allied coatings, or establishments that mix, mill, blend and/or extrude chemicals that do not contain the target HAP. Based on current information, we believe there are 26 affected facilities in the source category. All of these facilities have relatively diverse chemical product lines, capacities and processes. We believe that 10 of these existing facilities are considered small businesses, which are defined by the SBA as businesses of less than 500 employees.

C. What are the production operations, emission sources, and available controls?

When target HAP are present in the chemicals used to produce chemical preparations, the emission sources are comprised of some or all of the following equipment: mixers, blenders, mixing or blending tanks, rolling or grinding mills, and extruders.

Despite their wide variety of products, these facilities use similar processing operations and common control strategies. Most of the production equipment at all of these facilities is well controlled as a result of State requirements which focus on particulate matter (PM) emission reductions. The control technologies employed to control PM emissions among similar types of process equipment remains consistent, since the focus is on PM emissions reductions. Since the target HAP are emitted as a particulate, and are a subset of PM, the existing control

technologies which control PM, and hence target HAP, emissions from similar processes is consistent across facilities. For example, dry mixing operations will often use fabric filters to control PM emissions so that the captured dust may be re-used in the process. Likewise, wet scrubbers are typically used in situations where the captured wet material can be returned to the process either as-is or after being sent through a spray dryer.

D. What existing national standards apply to this source category?

There are no existing national standards that apply to activities in the chemical preparations source category as defined in this subpart. However, it is important to note that the NAICS codes for this source category, 311942, 325199, 325510, and 325998, are comprised of sources that produce a wide variety of products and that some of the processes for producing those products are covered under other NESHAP or area source regulations.

We have tried to minimize the potential for overlap issues with these other national standards by precisely defining the source category for this rule. In addition to specifying the nature of the activities conducted at the affected facility, the definition specifies the type of HAP that must be contained, contacted, or processed in the various manufacturing processes for those processes to be subject to the rule.

III. Summary of Proposed Standards

A. Do the proposed standards apply to my source?

The proposed subpart BBBBBBB standards would apply to all existing or new manufacturing operations located at an area source that produce chemical preparations by mixing, milling, blending and/or extruding chemical compounds containing target HAP. The standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

B. When must I comply with the proposed standards?

All existing area sources subject to this proposed rule would be required to comply with the rule requirements no later than one year after the date of publication of the final rule in the **Federal Register**. New sources would be required to comply with the rule requirements on the date the final rule is published in the **Federal Register** or upon startup of the facility, whichever is later.

¹ Currently, we believe that all existing chemical preparation entities would be classified primarily under NAICS 325998 and 311942, which define small businesses as those with 500 employees or less. Should any entities with primary NAICS 325199 be subject to the proposed standards, the small business definition for these entities would be those with fewer than 1,000 employees.

C. What are the proposed standards?

The proposed standards for new and existing affected sources establish a PM control device percent reduction efficiency requirement and require all process vent streams from mixing, blending, milling and extruding equipment in target HAP service to be routed through a PM control device that meets the specified efficiency requirement. The proposed standards will be met through the use of a vent stream collection system and control device, such as a wet scrubber or fabric filter, meeting the specified percent reduction efficiency requirement. Sources must maintain and operate a control device which achieves the specified removal efficiency in accordance with the manufacturer's specifications and must maintain and inspect the vent collection system and control devices on a regular basis.

New sources must demonstrate compliance with the PM control device percent reduction efficiency requirement through control device performance testing, manufacturer's control device performance guarantee information, or engineering calculations. The proposed standards allow existing sources to use the same three methods to demonstrate compliance, but existing sources may use the results of performance tests previously conducted, provided that the performance test was conducted using the reference test method specified in the proposed rule, represents the control device's normal operations (per manufacturer's recommendations) and was conducted within the last 5 years.

D. What are the compliance requirements?

The owner or operator of both new and existing sources would be required to submit an Initial Notification of Applicability that states they are subject to the regulation within 120 days of the effective date of the rule and a Notification of Compliance Status within 60 days after the applicable compliance date to demonstrate initial compliance with the proposed standards. Facilities would be required to comply continuously with the standards (to route emissions to a control device that achieves 95 percent PM emission reductions) during all operations that emit target HAP, including periods of startup and shutdown of these operations. Compliance on a continuous basis is determined on the basis of a three-hour rolling average, *i.e.*, parameters for each three-hour period are determined by averaging the control device operating

parameters for each hour during the three-hour period including startup and shutdown. If a source is processing target HAP materials (*i.e.*, in target HAP service) for a period less than 3 hours, then the control device operating parameters are averaged over the period that the target HAP is being processed. Under the proposed rule, sources will determine their compliance with the emission reduction requirements by continuously monitoring specified operating parameters. Sources must also comply with specified periodic inspection procedures for vent collection systems and control devices, and must submit semi-annual compliance summary reports.

For the reasons specified in section IV of this preamble, EPA has determined that it is appropriate to use particulate matter emissions as a surrogate for target HAP emissions for all emission points in this source category, *i.e.*, mixers, mixing and blending tanks, mills, and extruders. As described above, to demonstrate initial compliance with the emission reduction requirements, existing sources will be allowed to use the results of performance tests previously conducted provided the test was conducted using the specified reference test method, represents the control device's normal operations (per manufacturer's recommendations) and was conducted within the last 5 years. As also described above (and in Table 2 of the proposed regulations), in lieu of a performance test, both new and existing sources may use control device manufacturer's performance guarantees or engineering calculations to demonstrate initial compliance with the emission reduction requirements. Due to the wide variety of operations conducted at facilities in the chemical preparations industry, it is possible that affected facilities could have target HAP present in all, or only some, of the process emissions. Therefore, each facility will be required to identify and document periods of operation in which chemical preparations operations are processing target HAP-containing materials and to document that the vent collection system and control device were operating properly during these periods when the equipment is in target HAP service. Daily, monthly and annual inspections are required to ensure proper maintenance and operation of the vent collection system and control device components. Records of the inspection activities and corrective actions must be maintained to document compliance with these management practices.

Continuous compliance with the emission reduction requirements is

demonstrated through both control device parameter monitoring and keeping records of periods where the chemical preparations operation is in target HAP service. The control device manufacturer's recommended (or those conditions present during the performance test, if a test was performed) pressure drop, scrubber water supply pressure, and flow rate, as appropriate, depending on the device used to control emissions, must be maintained for each PM control device. As mentioned above, the source must document that each control device was being operated normally, according to the device manufacturer's recommendations, during periods of processing target HAP-containing materials. Records of calibration and accuracy checks of the continuous parameter monitoring system must be maintained to document proper operation and maintenance of the monitoring system.

E. What are the notification, recordkeeping, and reporting requirements?

The owner or operator of new and existing sources would be required to comply with the requirements of the General Provisions (40 CFR part 63, subpart A) identified in Table 6 of this proposed rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. We are proposing that the owner or operator of an affected facility submit an Initial Notification of Applicability and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions. These notifications are needed for EPA to determine applicability of the standard to a particular source and a source's initial compliance with specific rule requirements. Sources would also be required to submit semi-annual compliance summary reports which document both compliance with the requirements of this rule and any deviations from compliance with any of those requirements.

Owners and operators would be required to maintain the records specified by 40 CFR 63.10 and, in addition, would be required to maintain records of all inspection and monitoring data, including:

- Records of particulate matter control device operating parameters. For fabric filters, the parameter is the pressure drop across the device. For wet scrubbers, the parameters are the water supply pressure and water flow rate.
- Records of periods of target HAP processing that demonstrate, along with

the particulate matter control device operating parameters above, that the control device is being operated within the manufacturer's specifications while compounds containing target HAP are being processed.

- Records of control device make, model, and the installation date of each such piece of equipment.
- A copy of any performance guarantee certificate provided by the control device manufacturer.
- Records of inspections of vent collection systems and control devices.
- Records of calibration and accuracy checks for the continuous parameter monitoring systems.
- Records of engineering calculations or test results to demonstrate initial compliance with the control device removal efficiency requirement.

IV. Rationale for this Proposed Rule

A. How did we select the source category?

As described in section II.B, we listed the chemical preparations source category under CAA section 112(c)(3) on November 22, 2002 (67 FR 70427). The decision to include this source category on the area source category list was based on data from the CAA section 112(k) inventory, which represents 1990 urban air information. The chemical preparations source category was listed as contributing a percentage of the total area source emissions for the following urban HAP: metal compounds for chromium, lead, manganese and nickel (the "target HAP"). For this source category, we gathered information on the production operations, emission sources, and prevalent emission controls employed by sources, through reviews of published literature, and reviews of construction and operating permits. We also held discussions with industry representatives and State permitting organizations. This research confirmed that the chemical preparations source category emits the listed target HAP and that the existing add-on controls are effective controls for reducing target HAP emissions.

B. How did we select the affected source?

Affected source means the collection of equipment and processes in the source category or subcategory to which the subpart applies. For the chemical preparations source category, the affected source is comprised of the following process equipment when the equipment contains, contacts, or is processing target HAP: mixers, mixing and blending tanks, mills, and extruders.

After reviewing the gathered information discussed above, we identified 26 facilities that reported emissions of target HAP. These 26 facilities manufactured a wide range of chemical preparations, including, for example, fluxes, concrete additives, rust preventatives, drilling fluids, and gelatin. Some of these products contain target HAP, while other materials being produced using the same equipment may not. Despite the wide variety of products produced at these facilities, some common processing operations and control strategies became evident after further facility permit review and contact with some of the facilities. For example, fabric filters would often be used to control PM emissions from dry mixing operations, and wet scrubbers would be used in situations where the wet material could either be mixed back into the raw materials or sent through a spray dryer and then combined with raw materials.

Our research indicates that each facility utilizes at least one of the listed operations. Therefore, we define the affected source as consisting of any (one or more) of these operations when the operation contains, contacts, or processes compounds containing target HAP to produce a chemical preparation. By specifying periods of production where the equipment is "in target HAP service," we are able to clarify applicability to the periods of operation where emissions of target HAP would occur, thereby avoiding any burden to those operations or entities that are not processing target HAP-containing materials.

We also realized the potential for overlap with other rules, especially the area source standards for chemical manufacturing (40 Part 63 Subpart VVVVVV) and paint and allied products (40 Part 63 Subpart CCCCCC). We have, therefore, exempted chemical preparation operations that are subject to the requirements of Subpart VVVVVV or Subpart CCCCCC, as applicable, from the requirements of the proposed chemical preparations regulation.

C. How did we address metal HAP emissions in this rule?

For this proposed rule, we have selected PM as a surrogate for the target metal HAP, primarily because the target HAP are emitted as a wet or dry stack particulate (the target HAP are a subset of the particulate matter). As a result, a vent collection system and control device that is effectively controlling PM will also effectively control target HAP since these HAP are a fractional constituent of the PM being controlled. Further, based on the available

information, we believe that specifying specific emission or reduction limits for each target HAP would not achieve any greater reduction in emissions of the target HAP than the control devices already achieve using PM as a surrogate. We also believe it would create a significant economic burden for the affected sources and permit authorities if this proposed rule required sources to demonstrate compliance with a specific limit for each of the target HAP compounds. Based on our knowledge of the relationship between PM as a whole and the target HAP, we believe that demonstrating compliance with the proposed PM reduction requirements will ensure that appropriate reductions in emissions of target HAP are achieved.

D. How was GACT determined?

As provided in CAA section 112(d)(5), we are proposing standards that provide for the use of GACT to control chemical preparations area source category HAP emissions. As noted in section II.A of this preamble, the statute allows the Agency to establish standards for area sources listed pursuant to section 112(c) based on GACT. The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

We gathered available data from a variety of sources, e.g., State and local permits and regulations mandating a specific level of control, regarding existing affected sources in the chemical preparations source category in order to determine the types of controls being used and the level of control generally achieved by those controls. Our analysis of that information revealed that all of the identified affected sources are well controlled because they employ some type of particulate matter control. The most common controls used were wet scrubbers and fabric filters. Based on our available permit background information for the chemical preparations source category and control device technical references, we found that existing PM control technologies (primarily fabric filters and wet scrubbers) in this category achieve between 93 and 98 percent PM reduction efficiency, with a median facility that achieves 95 percent PM reduction efficiency. We considered requiring controls for this category that achieve 98 percent PM emission reductions, but found that this would likely force a majority of existing sources to install new controls at an incremental cost to some facilities of over \$400,000/ton for the additional

target HAP reduction, which we believe is unreasonable. In addition, while fabric filter technology is capable of achieving 98 percent PM reductions, we are not certain that available wet scrubber technology can achieve a 98 percent PM reduction. We considered requiring controls for this category that achieve 93 percent PM emission reductions, but believe that all existing facilities could achieve 95 percent PM reduction efficiency without requiring the installation of new emission control equipment. We recognize that some existing facilities may need to conduct new performance testing on existing controls to demonstrate 95 percent PM emission reduction performance, but we believe that 95 percent PM reduction efficiency, that is represented by the median facility control technology, best represents GACT for this source category. Based on this information, we have determined that GACT for this source category consists of a vent collection system to collect emissions from process operations, and an associated particulate matter control device, such as a fabric filter or wet scrubber that is achieving a 95 percent reduction in PM emissions.

While our information indicates that all of the target HAP emissions points at identified existing sources are currently controlled with PM control devices, we are requesting comment on whether some chemical preparations operations are currently uncontrolled. We considered whether we should require the use of PM controls on ancillary processes (beyond mixers, mixing and blending tanks, mills, and extruders) at existing affected sources but concluded that these operations are beyond the scope of the original source category listing. We also recognize that there may be a point where installing PM controls would be economically or technically infeasible regardless of the size of the facility, especially where very low quantities of PM are being emitted. To address these issues, we analyzed permit information and applicable State regulations to determine if there were any PM concentration limits that would serve as a reasonable alternative to the percent reduction requirement. We found that, for chemical preparations affected sources, in most instances State permits do not specify a limit or control performance requirement beyond simply routing PM emissions to a control device. However, in a few situations, one State has specified a 0.03 grains per dry standard cubic foot (gr/dscf) PM concentration limit at the outlet of the control devices, the calculations for which are based on a 98

percent PM reduction assumption and site specific data. We are not certain if the site specific data in these cases is sufficient on which to base a nationwide equivalent emission limit, and are, therefore, requesting comment on whether an emission limit of 0.03 gr/dscf should be included in the final rule as an alternative compliance option. Commenters should include with their comments any data they believe supports an emission limit of 0.03 gr/dscf as a compliance alternative in the final rule.

We have also considered whether new sources should have a PM reduction requirement that is greater than 95 percent. Based on our analysis of information we gathered from permits, technical references, and comparisons to similar area source requirements, we believe that it may be possible for GACT for new sources to be greater than 95 percent PM reduction. However, we currently do not have enough information for the chemical preparations source category to confirm that this level of control would be "generally available" for potential new affected sources. Therefore, we are also requesting comment on whether greater than 95 percent PM reduction is an economically feasible level of control for new sources.

E. How did we select the compliance requirements?

We are proposing initial compliance demonstrations, monitoring, inspections, reporting, notification, and recordkeeping requirements sufficient to assure compliance with the rule as proposed. These requirements are based, in part, on requirements imposed on several facilities within the chemical preparations source category by State permits or regulations and on our general understanding, based on years of experience, of how control devices perform and can be effectively monitored. As is the case with many of our rules, we are proposing to use data from the monitoring of certain parameters which we have found to be indicative of the effective operation of collection systems and control devices to demonstrate compliance. The parameter monitoring requirements, together with vent collection system and control device inspection requirements, are intended to ensure that the information necessary to establish that emissions controls are maintained and operated properly on a continuing basis is collected and reported. We believe the proposed requirements will both assure compliance with the emission reduction requirements of this proposed

rule and minimize the burden on facilities that must implement them.

We are proposing that compliance with the requirements for mixers, mixing and blending tanks, mills and extruders in target HAP service be demonstrated by continuously monitoring particulate matter control device operating parameters. If a fabric filter is utilized, then the pressure drop of the fabric filter, as specified by the manufacturer or measured during the most recent compliance demonstration, is the monitored parameter. For a wet scrubber, monitoring of the water supply pressure and scrubbing water flow rate are proposed. The monitoring of these parameters will demonstrate that the device is being operated in accordance with the control device manufacturer's recommendations or consistent with its operation during the most recent compliance demonstration, whichever is applicable. Particulate matter hoods or vent collection systems routing the emissions to the control device must be designed to capture PM to the extent practicable from the emission point. Daily, monthly, and annual inspection and recordkeeping requirements will be used to demonstrate that the vent collection system and control device are being properly maintained.

For the initial PM percent reduction efficiency compliance demonstration, the owner or operator of a facility subject to existing source standards would be allowed to use the results from prior performance tests as long as the performance test was conducted using the reference test method specified in the proposed rule, provided that the performance test represents the control device's normal operating conditions (per manufacturer's recommendations) and was conducted within the last 5 years. We believe that this will help to reduce the compliance burden for existing sources while at the same time providing adequate assurances that the results reflect the actual operating efficiency of the control device. Initial compliance with the proposed requirement to employ a PM control device with a PM reduction efficiency of 95 percent to control PM emissions from the identified emission points at both new and existing sources can be demonstrated using the results of PM control device performance tests, PM control device manufacturer performance guarantees, or engineering calculations. As discussed above, for existing sources, we are proposing to allow the use of the results of previous performance tests so long as those tests meet the specified criteria.

F. Why did we decide to exempt this area source category from title V permitting requirements?

For the reasons described below, we are proposing to exempt affected sources in the chemical preparations area source category from title V permitting requirements unless the source is otherwise required to have a title V permit. That is, we are proposing that being subject to the chemical preparations area source rule would not itself trigger the need to obtain a title V permit. Section 502(a) of the CAA provides that the Administrator may exempt an area source category (in whole or in part) from title V if (s)he determines that compliance with title V requirements is "impracticable, infeasible, or unnecessarily burdensome" on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term "unnecessarily burdensome" in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, or portion thereof, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (Exemption Rule).

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category are: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing these factors in the Exemption Rule, we further explained that we considered on "a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether

considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act." See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category, or portion thereof.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting an area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. As explained below, we propose that title V permitting is unreasonably burdensome for the area source category at issue in this proposed rule. We have also determined that the proposed exemptions from title V would not adversely affect public health, welfare and the environment. Our rationale for this decision follows.

In considering whether to exempt sources in the chemical preparations category from title V requirements, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in the proposed NESHAP for the area source category. The proposed rule requires facilities to route all process vent streams from specified equipment in target HAP service to an add-on PM control device with a demonstrated percent reduction efficiency of 95 percent. Continuous compliance with this requirement would be demonstrated using parametric monitoring of the vent collection system and control device and identifying processing periods of target HAP-containing materials. For add-on control devices the proposed rule specifies the monitoring parameter(s) and averaging periods for each type of control device. The proposed rule would require that the owner/operator maintain the 3-hour average (or overall average, for periods in target HAP service less than 3 hours) pressure drop across the control device or the water supply pressure and scrubbing liquor flow rate, as appropriate to the control device, within

the manufacturer's recommended range for the control device, or within the range established during the most recent performance test. Sources would demonstrate initial compliance using one of the following methods: Conduct initial performance tests, use the results of previous performance tests meeting specified requirements for existing sources only, use and maintain records of control device manufacturer's guarantees, or use and maintain records of engineering calculations. Existing sources would be allowed to use previously conducted performance tests to demonstrate compliance provided they were conducted using the reference test method specified in the proposed rule, were conducted within the past five years and reflect the control device's normal operating conditions. The proposed rule also requires the preparation of a semi-annual compliance certification report which would identify any deviations from the rule requirements that occurred during the reporting period and submission of this report to the permitting agency. The semi-annual report would call attention to those facilities in need of inspection in the same way as the reporting requirements in a title V permit. In addition, records sufficient to ensure that the compliance requirements are followed and that any needed corrective actions are taken would be required. Therefore, this proposed rule contains monitoring requirements that constitute periodic monitoring sufficient to ensure compliance with the proposed rule.

As part of the first factor, in addition to monitoring, we have considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. We have considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification as specified in 40 CFR 70.6 and 71.6. For any affected area source in this category, this proposed rule would require an Initial Notification of Applicability and a Notification of Compliance Status. This proposed rule also requires owners or operators of affected facilities to certify compliance with a requirement that vent streams from specified equipment in target HAP service be routed to a control device with a demonstrated PM percent reduction efficiency of 95 percent on an annual basis. In addition, owners or operators of affected facilities must maintain records showing compliance with all of the proposed rule's

requirements and provide a report to the permitting agency if any deviation occurs. The information in the deviation report is similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

We acknowledge that title V might impose some additional compliance requirements on this category, but we believe the monitoring, recordkeeping and reporting requirements of this proposed NESHAP for the chemical preparations source category would be sufficient to assure compliance with the provisions of this NESHAP, and that the application of title V would not significantly improve compliance.

For the second factor, we determined whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimates that the average cost of obtaining and complying with a title V permit is \$65,700 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2007, EPA ICR Number 1587.07. EPA does not have specific estimates for the burdens and costs of permitting sources in the chemical preparations area source category; however, there are certain activities associated with the part 70 and 71 rules that are required of all sources. These activities are mandatory and impose burdens on the facility. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the

permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. For a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for facilities in the chemical preparations area source category, we estimated that 10 out of the 26 facilities that would be affected by this proposed rule are small businesses, all with fewer than 500 employees. We believe that these small sources lack both the technical resources to comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants to provide those resources. As discussed previously, title V permitting would impose significant costs on these area sources, and, accordingly, we believe that title V would be a significant burden for sources in this category. Almost 40 percent are small businesses with limited resources, and under title V, they would be subject to numerous mandatory activities with which they would have difficulty complying, whether they were issued a standard or a general permit. Thus, we conclude that factor two supports title V exemption for this category.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. In discussing the second factor, we explained that the costs of compliance with title V would impose a significant burden on many of the 26 facilities estimated to be affected by the proposed rule. Although title V might impose additional requirements, as discussed in more detail above, we believe that the monitoring, recordkeeping and reporting requirements in this proposed NESHAP would assure compliance with the emission standards imposed in the NESHAP as proposed. In addition, below in our consideration of the fourth factor, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemption for this area source category.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. EPA has implemented regulations that provide states the opportunity to take delegation of area source NESHAP, and we believe that states delegated programs are sufficient to assure compliance with this NESHAP. See 40 CFR part 63, subpart E (States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce all NESHAP before EPA will delegate the program).

We also noted that EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. Also, states and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance success in complying with these proposed standards. We believe that together the statutory requirements for implementation and enforcement of this NESHAP by the delegated states and EPA and the additional assistance programs described above are sufficient to assure compliance with these proposed standards without relying on title V permitting.

In light of all the information presented here, we believe that there are implementation and enforcement programs in place that are sufficient to assure compliance with the proposed standards without relying on title V permitting.

Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add some additional compliance requirements if imposed, we believe that this would not result in significant improvements in compliance with this proposed rule because the proposed rule requirements are specifically designed to assure compliance with the emission standards imposed on this area source category. We further maintain that the economic and non-economic costs of compliance with title V would impose a significant burden on the sources in the chemical preparations area source category. We determined that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. And, finally, there are adequate

implementation and enforcement programs in place to assure compliance with these proposed standards. Thus, we propose that title V permitting is “unnecessarily burdensome” for this area source category.

In addition to evaluating whether compliance with title V requirements is “unnecessarily burdensome”, EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting this area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of this area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, we explained in the Exemption Rule that requiring permits for a relatively small number of area sources could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance by major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. Based on the above analysis, we conclude that title V exemptions for these area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the reasons stated here, we are proposing to exempt this area source category from title V permitting requirements.

V. Summary of Impacts of the Proposed Standards

A. What are the air impacts?

Since 1990, the performance of the PM control technology utilized by the chemical preparations industry has not advanced significantly. We believe, however, that market forces, such as the economic benefits inherent in minimizing raw material or product losses from dust emissions, have

encouraged widespread use of these controls. Further improvements in formulations of products produced by the chemical preparations industry, such as reduction or elimination of lead chromate in certain products, have enabled the industry to further reduce their air impacts. Therefore, while this proposed rule does not require air emission reductions from existing sources beyond those currently being achieved by affected sources, we believe that this proposed rule reflects significant reductions in emissions since 1990 based on the use of effective PM control technology together with a reduction in the use of target HAP by the industry.

B. What are the cost impacts?

All existing chemical preparations industry facilities are expected to currently be achieving the level of control required by the proposed standards. That is, we believe that all existing sources currently route vent streams from specified equipment in target HAP use through a PM control device with a PM percent reduction efficiency of 95 percent. Although this proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and, consequently, we did not estimate any cost impacts for new sources. Therefore, no additional air pollution control devices would be required. No other capital costs are associated with this proposed rule and no operational and maintenance costs are expected because we believe that facilities are already following the manufacturer's instructions for proper operation and maintenance of pollution control devices and vent collection systems.

The annual cost of monitoring (including inspections), reporting, and recordkeeping for this proposed rule is estimated to be approximately \$6,800 per facility per year after the first year. The costs are, therefore, expected to be less than 1 percent of revenues. The annual estimate includes 20 hours per facility per year for preparing semiannual compliance reports.

The additional cost of one-time activities during the first year of compliance is estimated to be approximately \$2,400 per facility. This includes labor hours for reading and understanding the rule, preparation of the Initial Notification of Applicability, preparation of the Notification of Compliance Status, development of a record system, and personnel training, for an industry-wide average estimate of approximately 32 hours per facility in the first year for one-time activities. The

resulting total hours for one-time activities, ongoing inspections, recordkeeping and semiannual compliance reporting activities for the first year of compliance are 113 hours per facility.

Information on our cost impact estimates on the sources in the chemical preparations area source category is available in the docket for this proposed rule. (See Docket ID No. EPA-HQ-OAR-2009-0028.)

C. What are the economic impacts?

The only measurable costs attributable to these proposed standards are associated with the monitoring, recordkeeping, and reporting requirements. These proposed standards are estimated to impact a total of 26 area source facilities. We estimate that approximately 38 percent (10 of 26) of these facilities are small entities as defined by the SBA. Our analysis indicates that compliance with this proposed rule would not have a significant adverse impact on any facilities, large or small, since these costs are less than 1 percent of revenues for each facility.

D. What are the non-air health, environmental, and energy impacts?

No detrimental secondary impacts are expected to occur from compliance with the proposed rule by chemical preparations industry sources because all facilities are currently achieving the GACT level of control. No additional solid waste would be generated as a result of the PM emissions collected and there are no additional energy impacts associated with the operation of control devices at chemical preparations industry sources. We expect no increase in the generation of wastewater or other water quality impacts.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this action is a “significant regulatory action” because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the OMB for review under Executive Order 12866 and any changes made in response to the OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to OMB for approval

under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2356.01.

The recordkeeping and reporting requirements in this proposed rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded in accordance with CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This proposed NESHAP would require sources in the chemical preparations area source category to submit an Initial Notification of Applicability and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A) and to conduct continuous parametric monitoring, vent collection system and control device inspections, and submit semi-annual compliance reports. The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 2,372 labor hours per year at a cost of approximately \$176,000 or approximately \$6,800 per facility.

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-2009-0028]. 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 August 5, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by September 4, 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 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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business that is engaged in the manufacturing of chemical preparations 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 is estimated to impact all new and 26 existing chemical preparations area source facilities. We estimate that 10 of these facilities may be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 1 percent. The costs are so small that the impact is not expected to be significant. Although this proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and, consequently, we did not estimate any impacts for new sources.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to minimize the impact of this proposed rule on small entities. The standards represent practices and controls that are common throughout the chemical preparations industry. The standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed based on information obtained from consultation with small

business representatives at the State and national level and industry representatives that are affiliated with small businesses.

We continue to be interested in the potential impacts of this proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and Tribal governments or the private sector. This action imposes no enforceable duty on any State, local, Tribal governments or the private sector.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rules contain no requirements that apply to such governments, and impose no obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132 (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. This proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action would not have substantial direct effects on Tribal governments, 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. The action imposes requirements on owners and operators of specified area sources and not Tribal governments. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from Tribal officials.

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

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

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This proposed 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. Further, we have concluded that this final rule is not likely to have any adverse energy effects because energy requirements will not be significantly impacted by additional monitoring requirements. There are no additional pollution controls that would consume energy required by this proposed rule.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, and 5A. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. The search identified 16 voluntary consensus standards that were potentially applicable for this rule in lieu of EPA reference methods. EPA has decided to use ASME PTC 19.10–1981, “Flue and Exhaust Gas Analyses” as an acceptable alternative to EPA Method 3B. EPA determined the 15 other candidate VCS (ASTM D3154–00 (2006), ASTM D3464–96 (2007), ASTM D3796–90 (2004), ISO 10780:1994, ASME B133.9–1994 (2001), ANSI/ASME PTC 19–10–1981 Part 10, ISO 10396:1993 (2007), ISO 12039:2001, ASTM D5835–95 (2007), ASTM D6522–00 (2005), CAN/CSA Z223.2–M86 (1999), ISO 9096:1992 (2003), ANSI/ASME PTC–38–1980 (1985), ASTM D3685/D3685M–98 (2005), CAN/CSA Z223.1–M1977) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the proposed rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, and 5A.

Under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

EPA welcomes comments on this aspect of this proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental

justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

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 or environmental effects on any population, including any minority or low-income population. This proposed rule will establish national standards for the chemical preparations area source category.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 28, 2009.

Lisa P. Jackson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart BBBBBBBB to read as follows:

Subpart BBBBBBBB—National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

Sec.

Applicability and Compliance Dates

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63.11580 What are my compliance dates?

Standards and Compliance Requirements

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Subpart BBBBBBB—National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry**Applicability and Compliance Dates****§ 63.11579 Am I subject to this subpart?**

(a) You are subject to this subpart if you meet all of the following conditions:

(1) You own or operate a chemical preparations facility (as defined in § 63.11588, “What definitions apply to this subpart?”),

(2) The chemical preparations facility is a stationary area source of hazardous air pollutants (HAP) (as defined in § 63.2), and

(3) The chemical preparations facility has at least one chemical preparations operation in target HAP service (as defined in § 63.11588, “What definitions apply to this subpart?”).

(b) The affected source is all chemical preparations operations (as defined in § 63.11588, “What definitions apply to this subpart?”) located at a facility that meets the criteria specified in paragraph (a) of this section.

(1) An affected source is existing if you commenced construction, as defined in § 63.2, of the affected source before August 5, 2009.

(2) An affected source is new if you commenced construction or reconstruction, as defined in § 63.2, of the affected source on or after August 5, 2009.

(c) On and after August 5, 2009, if your chemical preparations operation becomes a major source, as defined in § 63.2, you must continue to meet the requirements of this subpart in addition to any maximum achievable control technology standards which may apply at that time.

(d) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act.

(e) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continuously comply with the provisions of this subpart.

(f) You are exempt from the requirements specified in this subpart if the chemical preparations operations at your facility are subject to the requirements specified in subpart VVVVVV or subpart CCCCCC of this part.

§ 63.11580 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than [insert date one year after publication of the final rule in the **Federal Register**].

(b) If you start up a new affected source on or before [insert the date of publication of the final rule in the **Federal Register**], you must achieve compliance with this subpart no later than [insert the date of publication of the final rule in the **Federal Register**].

(c) If you start up a new affected source after [insert the date of publication of the final rule in the **Federal Register**], you must achieve compliance with this subpart upon startup of your affected source.

Standards and Compliance Requirements**§ 63.11581 What are my standards?**

You must meet the emission standard in Table 1 to this subpart and the management practices in § 63.11584 of this subpart that apply to you. These standards apply at all times.

§ 63.11582 What are my compliance requirements?

(a) You must demonstrate initial compliance with the emission reduction requirements specified in Table 1 of this subpart as follows:

(1) Using the methods specified in Table 2 of this subpart, or

(2) For existing sources only, using the results of an emissions test conducted in the past 5 years, provided the test meets the following requirements.

(i) The test was conducted under conditions that represent normal operation.

(ii) The test was performed using the methods specified in Table 3 of this subpart.

(iii) The test was conducted with a minimum of three separate test runs, as specified in § 63.7(e)(3).

(b) If you choose to demonstrate compliance with the emission reduction requirements in Table 1 of this subpart by conducting an emissions test, you must follow the requirements specified in paragraphs (b)(1) through (b)(4) of this section and include the results in your Notification of Compliance Status Report (NOCSR) in accordance with § 63.11585(b)(3).

(1) You must conduct the tests under conditions that represent normal operation.

(2) You must perform the test using the methods specified in Table 3 of this subpart.

(3) You must conduct a minimum of three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3).

(4) You must use the following equation to demonstrate compliance with the emission reduction requirements specified in Table 1 of this subpart:

$$RE = [(Ci - Co)/Ci] * 100$$

where:

RE = particulate matter removal efficiency, percent.

Ci = concentration of particulate matter at inlet of control device, gr/dscf.

Co = concentration of particulate matter at outlet of control device, gr/dscf.

(c) If you choose to demonstrate compliance with the emission reduction requirements specified in Table 1 of this subpart by providing control device manufacturer's performance guarantee information, then you must include the following information in your NOCSR (in accordance with § 63.11585(b)(3)).

(1) Control device make, model, and installation date.

(2) Performance guarantee certificate provided by the control device manufacturer.

(3) If a filter is used to control particulate matter, performance guarantee information for the fabric or fiber filters used in the control device.

(d) If you choose to demonstrate compliance with the emission reduction requirements specified in Table 1 of this subpart by providing engineering calculations, then the calculations and supporting documentation must contain the items specified in paragraphs (d)(1) through (d)(5) of this section. These calculations and supporting documentation must be included in your NOCSR (in accordance with § 63.11585(b)(3)).

(1) Calculations and supporting documentation, such as delivery receipts, production logs and raw material safety data sheets that quantify the amount of target HAP in the raw materials used in chemical preparations operations in the calendar year prior to the compliance date.

(2) Calculations and supporting documentation, such as sales receipts, production logs and product material safety data sheets (MSDS) for target HAP-containing products that quantify the amount of target HAP in products of the chemical preparations operations in the calendar year prior to the compliance date.

(3) Calculations and supporting documentation of target HAP raw material losses from the chemical preparations operations that were not contained in products, solid or liquid waste streams, or recycled back into the chemical preparations operation prior to any vent collection system or particulate matter control device in the calendar year prior to the compliance date. This quantity is the amount of target HAP-containing particulate matter in the uncontrolled air emissions from the chemical preparations operation (Qi).

(4) Calculation and supporting documentation, such as manufacturer guarantees, of quantities of target HAP-containing particulate matter captured by the vent collection system and particulate matter control device for the calendar year prior to the compliance date (Qo).

(5) Use the results of the calculations from paragraphs (d)(3) and (d)(4) of this section in following equation to demonstrate compliance with the emission reduction requirements specified in Table 1 of this subpart:

$$RE = [(Qi - Qo)/Qi] * 100$$

where:

RE = particulate matter removal efficiency, percent.

Qi = annual amount of particulate matter in uncontrolled emissions, pounds per year.

Qo = annual amount of particulate matter captured by control device, pounds per year.

§ 63.11583 What are my monitoring requirements?

(a) To demonstrate continuous compliance, you must establish and maintain site-specific control device parameter values that indicate proper operation of the control device to meet the emissions reduction requirements according to your monitoring plan established under paragraph (g) of this section, as specified in Table 4 of this subpart.

(b) Data recorded during monitoring malfunctions, associated repairs, or periods of inactivity of the chemical preparation operation resulting in cessation of emissions to which the monitoring applies may not be used in data averages and calculations to establish operating levels, nor may such data be used in fulfilling a minimum data availability requirement. You must operate the continuous parameter monitoring system (CPMS) during all other periods when the process equipment is in target HAP service and use all the data collected during these periods in assessing the operation of the process vent collection system and control device.

(c) You must install, calibrate, operate, and maintain each control device CPMS according to manufacturer's specifications, and as specified in paragraphs (c)(1) through (c)(5) of this section.

(1) The CPMS must be maintained and operated in a manner consistent with good air pollution control practices at all times.

(2) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(3) To determine the 3-hour average, you must:

(i) Have data from at least three of four equally spaced data values for that hour from a CPMS, except as stated in paragraph (b) of this section.

(ii) Determine each successive 3-hour average from all recorded readings for each 3-hour period, except as stated in paragraph (b) of this section. You must have at least two of the three hours for that period using only hourly values that are based on valid data (*i.e.*, not described by paragraph (b) of this section).

(4) For production periods in target HAP service less than 3 hours, you must:

(i) Have valid data from at least three of four equally spaced data values for each hour from a CPMS that is not out-of-control according to your manufacturer's recommendations.

(ii) Determine the average from all recorded readings for the production period, except as stated in § 63.11583(b).

(5) You must record the results of each calibration and validation check of the CPMS.

(d) For each pressure measurement device, you must meet the requirements of paragraph (c) of this section and the following:

(1) Locate the pressure sensor(s) in, or as close as possible to, a position that provides a representative measurement of the pressure.

(2) Use a gauge with a minimum measurement sensitivity of 0.12 kiloPascals or a transducer with a minimum measurement sensitivity of 5 percent of the pressure range.

(3) Check pressure tap for plugging daily. Perform an accuracy check at least quarterly or following an operating parameter deviation:

(i) According to the manufacturer's procedures; or

(ii) By comparing the sensor output to redundant sensor output.

(4) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(5) At least monthly or following an operating parameter deviation, perform a leak check of all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(6) At least quarterly or following an operating parameter deviation, perform visible inspections on all components if redundant sensors are not used.

(7) You must record the results of the inspections and accuracy and calibration checks specified in paragraphs (d)(3) through (d)(6) of this section in accordance with § 63.11585.

(e) As an alternative to installing the CPMS specified in paragraph (c) of this section, you may install a continuous emissions monitoring system (CEMS) that measures inlet and outlet PM concentrations around the control device and meets the requirements specified in § 63.8 and the applicable performance specifications of 40 CFR part 60, appendix B.

(f) For each monitoring system required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the following:

(1) Selection and justification of the monitored parameter that indicates proper operation of the control device to meet the emissions limitation, if the parameter measured is something other than pressure drop.

(2) Installation of the CPMS at a measurement location relative to each affected process unit such that the measurement is representative of control of particulate matter emissions (*e.g.*, on the last control device);

(3) Performance and equipment specifications for the parametric signal analyzer and the data collection and reduction system; and

(4) Performance evaluation procedures and acceptance criteria according to the manufacturer (*e.g.*, calibrations).

(g) In your site-specific monitoring plan, you must also address the following:

(1) Ongoing operation and maintenance procedures in accordance with the manufacturer's recommendations or the general requirements of § 63.8(c)(1), (c)(3), (c)(4)(ii), (c)(7), and (c)(8);

(2) Ongoing data quality assurance procedures in accordance with the manufacturer's recommendations; and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i) and the requirements of § 63.11585.

(h) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(i) You must operate and maintain the CPMS in continuous operation, and collect parametric data at all times that emissions are routed to the monitored control device, except for system breakdowns, repairs, maintenance periods, instrument adjustments, or checks to maintain precision and accuracy, calibration checks and zero and span adjustments.

§ 63.11584 What are my initial and continuous compliance management practice requirements?

(a) For each new and existing affected source, you must demonstrate initial compliance by conducting the inspection activities in paragraph (a)(1) of this section and ongoing compliance by conducting the inspection activities in paragraph (a)(2) of this section.

(1) Initial vent collection system and particulate control device inspections. You must conduct an initial inspection of each vent collection system and particulate control device according to the requirements in paragraphs (a)(1)(i) through (iii) of this section. You must record the results of each inspection according to paragraph (b) of this section and perform corrective action where necessary. You must conduct each inspection no later than 60 days after your applicable compliance date for each control device which has been operated within 60 days following the compliance date. For a control device which has not been installed or operated within 60 days following the compliance date, you must conduct an initial inspection prior to startup of the control device.

(i) For each wet particulate control system, you must verify the presence of water flow to the control equipment. You must also visually inspect the vent collection system ductwork and control equipment for leaks (as defined in § 63.11588, "What definitions apply to

this subpart?") and inspect the interior of the control equipment (if applicable) for structural integrity and the condition of the control system.

(ii) For each dry particulate control system, you must visually inspect the vent collection system ductwork and dry particulate control unit for leaks (as defined in § 63.11588, "What definitions apply to this subpart?"). You must also inspect the inside of each dry particulate control unit for structural integrity and condition.

(iii) An initial inspection of the internal components of a wet or dry particulate control system is not required if there is a record that an inspection has been performed within the past 12 months and any maintenance actions have been resolved.

(2) Ongoing vent collection system and particulate control device inspections. Following the initial inspections, you must perform periodic inspections of each vent collection system and PM control device according to the requirements in paragraphs (a)(2)(i) or (ii) of this section. You must record the results of each inspection according to paragraph (b) of this section and perform corrective action where necessary.

(i) You must inspect and maintain each wet control system according to the requirements in paragraphs (a)(2)(i)(A) through (C) of this section.

(A) You must conduct a daily inspection to verify the presence of water flow to the wet particulate control system.

(B) You must conduct monthly visual inspections of the vent collection system ductwork and wet particulate control equipment for leaks (as defined in § 63.11588, "What definitions apply to this subpart?").

(C) You must conduct inspections of the interior of the wet control system (if applicable) to determine the structural integrity and condition of the control equipment every 12 months.

(ii) You must inspect and maintain each dry particulate control unit according to the requirements in paragraphs (a)(2)(ii)(A) and (B) of this section.

(A) You must conduct monthly visual inspections of the vent collection system ductwork for leaks (as defined in § 63.11588, "What definitions apply to this subpart?").

(B) You must conduct inspections of the interior of the dry particulate control unit for structural integrity and to determine the condition of the fabric filter (if applicable) every 12 months.

(b) You must record the information specified in paragraphs (b)(1) through

(6) of this section for each inspection activity.

(1) The date, place, and time;
 (2) Person conducting the activity;
 (3) Method of inspection;
 (4) Operating conditions during the activity;
 (5) Results; and
 (6) Description of any correction actions taken.

(c) At all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.11585 What are my notification, recordkeeping, and reporting requirements?

(a) *What General Provision notification, recordkeeping and reporting requirements must I meet?* You must meet the requirements of 40 CFR part 63 subpart A according to Table 4.

(b) *What notifications must I submit and when?* (1) *Initial Notification of Applicability.* If you own or operate an existing affected source, you must submit an initial notification of applicability as required by § 63.9(b)(2) no later than 120 days after the date of publication of the final rule in the **Federal Register**. If you own or operate a new affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 120 days after initial start-up of operation or 120 days after the date of publication of in the **Federal Register**, whichever is later. The initial notification of applicability must include the information specified in § 63.9(b)(2)(i)–(iii).

(2) *Notification of Intent to conduct a Performance Test.* If you elect to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(3) *Notification of Compliance Status Report (NOCSR)*. You must submit a NOCSR according to § 63.9(h)(2)(ii). You must submit the NOCSR, including the performance test results, if applicable, before the close of business on the 60th calendar day following the applicable compliance date specified in § 63.11580 or completion of the performance test, whichever is sooner. The NOCSR must include the information in § 63.9(h)(2)(i)(A)–(G) necessary to demonstrate compliance with the emission standard as of the applicable compliance date.

(4) If you have an existing source and are using data from a previously-conducted performance test to serve as documentation of compliance with the emission reduction requirements of this subpart, you must submit the test data in lieu of the initial performance test results with the NOCSR required under paragraph (a)(3) of this section.

(c) *What reports must I submit and when?*

(1) You must submit compliance reports as specified in Table 5 to this subpart that applies to you.

(2) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each compliance report specified in Table 5 to this subpart according to the following dates:

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11580 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.11580.

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.11580.

(iii) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(3) The compliance report must contain the following information:

- (i) Company name and address.
- (ii) Statement by a responsible official with that official's name, title, and

signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) If there are no deviations from the emission reduction requirements specified in Table 1, a statement that there were no deviations from the emission reduction requirements during the reporting period.

(v) If there were no periods during which the CPMS was out-of-control as defined by the manufacturer's recommendations, a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(vi) A description of any changes in CPMS, processes, or controls since the last reporting period or for the first compliance report, since the notification of compliance status report.

(4) For each deviation, as defined in § 63.11588, including any deviations that occur during periods of startup, shutdown, and malfunction, you must include the information in paragraphs (c)(3)(i) through (iii) of this section, and the information in paragraphs (c)(4)(i) through (x) of this section.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time and duration that each CPMS was out-of-control.

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the CPMS.

(x) The date of the latest CPMS certification or audit.

(5) If acceptable to both the Administrator and you, you may submit reports and notifications electronically.

(d) *What records must I maintain?*

(1) You must maintain the following records:

(i) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification of Applicability or NOCSR that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(ii) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(iii) Records of CPMS calibration checks and adjustments and maintenance performed on CPMS as required by § 63.10(b)(2)(x) and (xi).

(iv) Records of CPMS as required by § 63.10(c) and § 63.11583(c)(5).

(v) Records of all inspections as required by § 63.11583(c)(5), § 63.11583(d)(7) and § 63.11584(b).

(vi) Records of the site-specific monitoring plan developed according to § 63.11583(a).

(vii) Records of particulate control device manufacturing specifications and recommendations.

(2) You must maintain the records specified in paragraph (c)(1) of this section in accordance with paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(ii) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(iii) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.11586 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (U.S. EPA) or a delegated authority such as your State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart has been delegated.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under 40 CFR part 63, subpart E, the following authorities are retained by the Administrator of U.S. EPA:

(1) Approval of alternatives to the requirements in §§ 63.11579, 63.11580,

63.11581, 63.11582, 63.11583, and 63.11584.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.11587 What General Provisions sections apply to this subpart?

You must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) according to Table 6 of this subpart.

§ 63.11588 What definitions apply to this subpart?

Chemical preparation means a product, or intermediate used in the manufacture of other products, manufactured in a process operation described by one or more of the following NAICS codes, with specific criteria, as follows: 325998 if the operation manufactures target HAP-containing products or intermediates; 311942 if the operation manufactures products containing trace mineral additives; 325199 if the operation is not covered by the chemical manufacturing area source regulation (40 CFR part 63, subpart VVVVVV); 325510 if the operation is not covered by the paint and allied products area source regulation (40 CFR part 63, subpart CCCCCC).

Chemical preparations facility means any facility-wide collection of chemical preparation operations.

Chemical preparations operation means the collection of mixing, blending, milling, and extruding

equipment used to manufacture chemical preparations. A chemical preparation operation may include all, or only some, of the equipment listed above, depending on the chemical preparation being manufactured. Mixing and blending equipment may be used to process either wet or dry materials, or a combination of wet and dry materials. Milling equipment includes, but is not limited to, various types of rolling mills, rotary mills, and grinders. Extruding equipment, for the purposes of this subpart, includes direct and indirect extruders, spray driers, and prilling towers.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or management practice established by this subpart;

(2) Fails to meet any term or condition that is adopted to implement a requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or management practice in this subpart during startup, shutdown, or malfunction.

In target HAP service means that equipment in the chemical preparation operation either contains, contacts, or is processing target HAP-containing materials.

Leak means a break in the integrity of the vent collection or control device system (*i.e.*, in the duct work, piping, *etc.*) such that visual particulate emissions, liquids or residue form outside the vent collection system or control device.

Process vent stream means a gas stream from any equipment in target HAP service at the point where that gas stream is discharged from a vent collection system to the inlet of a control device.

Research and development equipment means any equipment whose primary purpose is to conduct research and development to develop new processes and products, where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a *de minimis* manner.

Responsible official means responsible official as defined in § 63.2.

Target HAP means metal compounds for chromium, lead, manganese, and nickel.

Target HAP-containing means raw materials, intermediates, or products that contain one or more target HAP. Any material that contains compounds of chromium, lead, or nickel in amounts greater than or equal to 0.1 percent by weight (as the metal), or manganese compounds in amounts greater than or equal to 1.0 percent by weight (as the metal) is considered to be target HAP-containing. Target HAP content is shown in the formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material.

Vent collection system means hoods, enclosures, ductwork and fans utilized to remove particulate emissions from chemical preparations operations work areas.

Tables to Subpart BBBBBBB of Part 63

TABLE 1 TO SUBPART BBBBBBB OF PART 63—EMISSION REDUCTION REQUIREMENTS

For each * * *	You must * * *	Using * * *
Process Vent Stream	Route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95%.	Vent collection system and PM control device, such as a wet scrubber or fabric filter, that are maintained and operated per manufacturer's recommendations.

TABLE 2 TO SUBPART BBBBBBB OF PART 63—INITIAL COMPLIANCE DEMONSTRATION METHODS WITH THE EMISSION REDUCTION REQUIREMENTS OF TABLE 1

If you are demonstrating compliance with the * * *	You must demonstrate initial compliance by one of the following methods * * *
Requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95%.	(1) Perform a particulate matter emissions test using the methods listed in Table 3 to this subpart; or (2) Provide performance guarantee information from the control device manufacturers that certifies the device is capable of reducing particulate matter concentrations by 95%; or, (3) Provide engineering calculations, such as mass balance and flow rate calculations, capable of demonstrating that the control device is capable of reducing particulate matter concentration from the chemical preparations operation process vent streams by 95%.

TABLE 3 TO SUBPART BBBBbbb OF PART 63—TEST METHODS

For * * *	You must use * * *
1. Selecting the sampling locations ^a and the number of traverse points	EPA test method 1 or 1A in appendix A to part 60.
2. Determining the velocity and volumetric flow rate	EPA test method 2, 2A, 2C, 2D, 2F, or 2G, as appropriate, in appendix A to part 60.
3. Determining the gas molecular weight used for flow rate determination	EPA test method 3, 3A, 3B, as appropriate, in appendix A to part 60.
4. Measuring the moisture content of the stack gas	EPA test method 4 in appendix A to part 60.
5. Measuring the PM emissions	EPA test method 5A in appendix A to part 60.

^aThe sampling locations must be located at the outlet of the process equipment (or control device, if applicable), prior to any releases to the atmosphere.

TABLE 4 TO SUBPART BBBBbbb OF PART 63—CONTINUOUS COMPLIANCE DEMONSTRATION METHODS WITH THE EMISSION REDUCTION REQUIREMENTS OF TABLE 1

If you are demonstrating compliance with the . . .	You must demonstrate continuous compliance by . . .
Requirement to route all vent streams from equipment in target HAP service to a PM control device with a PM percent removal efficiency of 95%.	<p>a. Identifying periods when the chemical preparations operation is in target HAP service. These include:</p> <ol style="list-style-type: none"> 1. Production records showing the dates and times the chemical preparations operation is processing target HAP-containing materials, and 2. Material safety data sheets (MSDS) of target HAP-containing materials being processed. <p>b. Monitoring, with a CPMS, and maintaining records of data verifying that the vent collection system and control device were operated within the range of parameters established to comply with the emission reduction requirements (<i>i.e.</i>, according to manufacturer's recommendations or at the conditions used during the most recent performance test) while the chemical preparations operation was in target HAP service. The control device monitoring data is averaged over a 3-hour period or over all valid data points, if the chemical preparations operation is in target HAP service for less than 3 hours at a time. Monitored parameters may include electricity supply to vent collection system fans, pressure drop across the control device, or scrubber liquor flow to the control device, as appropriate to the particulate matter control device being used.</p>

TABLE 5 TO SUBPART BBBBbbb OF PART 63—REPORTING REQUIREMENTS

If you are demonstrating compliance with the . . .	You must submit a compliance report that contains . . .
Requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95%.	<p>a. Documentation of periods when the chemical preparations operation is in target HAP service. The documentation includes:</p> <ol style="list-style-type: none"> 1. Production records showing the dates and times the chemical preparations operation is processing target HAP-containing materials, and 2. MSDS of target HAP-containing materials being processed. <p>b. For the periods in target HAP service identified in a. above:</p> <ol style="list-style-type: none"> 1. A statement that there were no deviations from the requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95% during the reporting period, if there are no deviations that apply to you. 2. If there were no periods during which the process vent collection system and control device was not operating normally (<i>i.e.</i>, according to manufacturer's recommendations or at the conditions used during the most recent performance test), a statement that there were no periods during which the vent collection system and control device were not being operated normally during the reporting period. 3. If you have a deviation from the requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95% or periods where the vent collection system or control device were not operated normally, the report must contain the information specified in § 63.11585(b).

TABLE 6 TO SUBPART BBBBbbb OF PART 63—GENERAL PROVISIONS

Citation	Subject	Applies to subpart BBBBbbb
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)–(d)	Compliance With Standards and Maintenance Requirements	Yes.

TABLE 6 TO SUBPART BBBB BB OF PART 63—GENERAL PROVISIONS—Continued

Citation	Subject	Applies to subpart BBBB BB
§ 63.6(e)(1)(i)	Operation and Maintenance Requirements	No.
§ 63.6(e)(1)(ii)–(iii)	Operation and Maintenance Requirements	Yes.
§ 63.6(e)(2)	[Reserved]	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	No.
§ 63.6(f)(1)	Compliance with Non-opacity Emissions Standards—Applicability	No.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards	No. Subpart BBBB BB does not contain opacity or VE standards.
§ 63.6(i)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption	Yes.
§ 63.7	Performance Testing Requirements	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	Yes.
§ 63.8(a)(3)	[Reserved]	
§ 63.8(a)(4)	Monitoring with Flares	No.
§ 63.8(b)(1)	Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Yes.
§ 63.8(c)(1)(i)	CMS maintenance	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS Malfunction	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements	No.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	Yes.
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart BBBB BB does not contain opacity or VE standards.
§ 63.8(c)(6)	CMS Requirements	Yes. Only if you used CEMS to demonstrate compliance.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes. Only if you used CEMS to demonstrate compliance.
§ 63.8(d)	CMS Quality Control	Yes. Only if you used CEMS to demonstrate compliance.
§ 63.8(e)–(g)	CMS Performance Evaluation	Yes. Only if you used CEMS to demonstrate compliance.
§ 63.9	Notification Requirements	Yes. Except Initial Notification shall be submitted in accordance with the schedule in § 63.11585.
§ 63.10(a), (b)(1), (b)(2)(viii)–(xi), (c), (e)(1), (e)(2)(i), (f).	Recordkeeping and Reporting Requirements	Yes.
§ 63.11	Control Device and Work Practice Requirements	Yes.
§ 63.12	State Authority and Delegations	Yes.
§ 63.13	Addresses of State Air Pollution Control Agencies and EPA Regional Offices.	Yes.
§ 63.14	Incorporations by Reference	Yes.
§ 63.15	Availability of Information and Confidentiality	Yes.
§ 63.16	Performance Track Provisions	No.

[FR Doc. E9–18537 Filed 8–4–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 414, 415, and 485

[CMS-1413-CN2]

RIN 0938-AP40

Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical errors in the proposed rule entitled “Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B

for CY 2010” which appeared in the July 13, 2009 **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Aucha Prachanronarong, (410) 786-1879.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Errors

In FR Doc. E9-15835 of July 13, 2009, there were technical errors that are identified and corrected in the Correction of Errors section below.

In the Physician Quality Reporting Initiative section of the preamble to the proposed rule (section II.G.2.), we inadvertently omitted eight measures in our discussion of the new individual quality measures proposed for 2010.

II. Correction of Errors

In FR Doc. E9-15835 of July 13, 2009 (74 FR 33520), make the following corrections:

1. On page 33574, second column, first full paragraph, the number “168” is corrected to read “176.”

2. On page 33580, bottom fourth of the page, third column, last paragraph, the number “22” is corrected to read “30.”

3. On page 33581,
a. Top of the page,
(1) Second column, first paragraph, line 11, the number “22” is corrected to read “30.”

(2) Third column, first full paragraph,
(a) Line 3, the phrase “16 of these 22 measures” is corrected to read “24 of these 30 measures.”

(b) Line 6, the number “16” is corrected to read “24.”

b. Bottom two-thirds of the page, in Table 19—New Individual Quality Measures Proposed for 2010, after the last measure titled “HIV/AIDS: Sexually Transmitted Diseases—Syphilis Screening” add the following measures:

Measure title	NQF endorsement status as of 5/1/09	AQA adoption status as of 1/31/09	Measure developer	Reporting mechanism(s)
Functional Communication Measure: Spoken Language Comprehension.	Yes	No	American Speech-Language-Hearing Association (ASHA).	Registry.
Functional Communication Measure: Attention	Yes	No	ASHA	Registry.
Functional Communication Measure: Memory	Yes	No	ASHA	Registry.
Functional Communication Measure: Motor Speech	Yes	No	ASHA	Registry.
Functional Communication Measure: Reading	Yes	No	ASHA	Registry.
Functional Communication Measure: Spoken Language Expression.	Yes	No	ASHA	Registry.
Functional Communication Measure: Writing	Yes	No	ASHA	Registry.
Functional Communication Measure: Swallowing	Yes	No	ASHA	Registry.

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: July 31, 2009.

Dawn Smalls,

Executive Secretary to the Department.

[FR Doc. E9-18840 Filed 8-3-09; 4:15 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 635

[Docket No. 080724902-9663-01]

RIN 0648-AX07

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust the North and South Atlantic swordfish quotas for the 2009 fishing year (January 1, 2009, through December 31, 2009) to account for underharvests, and to transfer 18.8 metric tons (mt)

dressed weight (dw) to Canada per the 2006 and 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06-03 and 08-02. In addition, NMFS proposes to include minor regulatory modifications and clarifications, eliminate an existing sunset provision in the Madison-Swanson and Steamboat Lumps time/area closure, and establish a small time/area closure in the Gulf of Mexico called the “Edges 40 Fathom Contour.” These changes could impact fishermen with a commercial swordfish, HMS Angling, or Charter/Headboat (CHB) permit who fish for Atlantic swordfish.

DATES: Comments on this proposed rule may be submitted at a public hearing (oral or written), or via mail, or fax by September 4, 2009.

The public hearing dates and times are:

1. Monday, August 24, 2009, 3–5 p.m., Silver Spring, MD.

2. Wednesday, August 26, 2009, 6:30–8:30 p.m., Madeira Beach, FL.

ADDRESSES: You may submit comments, identified by [0648–AX07], by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal

eRulemaking Portal <http://www.regulations.gov>

- Fax: 301–713–1917, Attn: Steve Durkee

- Mail: 1315 East-West Highway, Silver Spring, MD 20910

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the supporting documents including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), and the EA for the proposed time/area closures are available from the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Steve Durkee (see **FOR FURTHER INFORMATION CONTACT**).

The public hearing locations are:

1. Silver Spring, MD - National Oceanic and Atmospheric Administration, SSMC III, room 1311B, 1301 East-West Highway, Silver Spring, MD 20910; and

2. Madeira Beach, FL Madeira Beach Town Hall, 300 Municipal Drive, Madeira Beach, FL 33708

FOR FURTHER INFORMATION CONTACT:

Steve Durkee or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917 or Rick Pearson by phone: 727–824–5399.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

1. Swordfish Quota

a. North Atlantic

ICCAT recommendation 06–02 established the current North Atlantic swordfish total allowable catch (TAC) of 14,000 metric tons (mt) whole weight (ww) through 2008. ICCAT recommendation 08–02 extended this TAC through 2009. Of the 14,000 mt ww, the United States is allocated 3,907 mt ww (2,937.6 mt dw). This allocation is the same the United States received during 2004 through 2008. ICCAT recommendation 06–02 (extended through 2009 by ICCAT recommendation 08–02) also limits the amount of North Atlantic swordfish underharvest that can be carried forward by all Contracting Parties, non-Contracting Cooperating Parties, Entities and Fishing Entities (CPCs) to 50 percent of the baseline quota allocation for 2008 and 2009. Therefore, the United States could carryover a maximum of 1,468.8 mt dw of underharvests from the previous year to be added to the baseline quota.

This proposed rule would adjust the total available quota for the 2009 fishing year to account for the 2008 underharvests. The 2009 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The total North Atlantic swordfish underharvest for 2008 was 2,691.9 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw. Therefore, NMFS is proposing to carry forward the capped amount per the ICCAT recommendation. The baseline quota plus the underharvest carryover maximum of 1,468.8 mt dw equals a proposed adjusted quota of 4,406.4 mt dw for the 2009 fishing year. The directed category would be allocated 3,639.5 mt dw that would be split equally into two seasons in 2009 (January through June and July through December). The incidental category, which includes recreational landings, would be allocated 300 mt dw, and the reserve category would be reduced from a quota of 485.7 mt dw to 466.9 due to the transfer of 18.8 mt dw to Canada (Table 1).

b. South Atlantic

ICCAT recommendation 06–03 established the South Atlantic

swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. Of the 17,000 mt ww TAC, the United States is allocated 100 mt ww (75.2 mt dw). As with the North Atlantic swordfish recommendation, ICCAT recommendation 06–03 establishes a cap on the amount of underharvest that can be carried forward during the defined management period (2007–2009). For South Atlantic swordfish, the United States is limited to carrying forward 100 mt ww (75.2 mt dw). The 2009 South Atlantic swordfish U.S. baseline quota is 75.2 mt dw. The total South Atlantic swordfish underharvest for 2008 was 150.4 mt dw, which exceeds the maximum carryover cap of 75.2 mt dw. Therefore, NMFS is proposing to carry forward the capped amount per ICCAT recommendation 06–03. As a result, the baseline quota plus the underharvest carryover maximum of 75.2 mt dw equals a proposed adjusted quota of 150.4 mt dw for the 2009 fishing year (Table 1).

c. Impacts

In recent years, the United States has not caught its entire swordfish quota and previous to 2007, underharvests were growing significantly from year to year. Beginning in 2007, the amount of underharvest that was available for carryover was capped at 50 percent of the quota for North Atlantic swordfish, and 100 percent for South Atlantic swordfish. The proposed adjusted quota for the North and South Atlantic swordfish, after accounting for the 2008 underharvests and annual transfer to Canada, would be the same in 2009 as the 2007 adjusted quota specifically examined in the Environmental Assessment (EA) that was prepared for the 2007 Swordfish Quota Specification Final Rule published on October 5, 2007 (72 FR 56929). The quota adjustments would not increase overall quotas and are not expected to increase fishing effort or protected species interactions beyond those considered in the EA mentioned above. Therefore, because there would be no changes to the swordfish management measures in this proposed rule, or the affected environment or any environmental consequences that have not been previously analyzed, NMFS has determined that the proposed rule and impacts to the human environment as a result of the quota adjustments are not significant and would not require additional NEPA analysis.

BILLING CODE 3510–22–S

Table 1 – Landings and Quotas for the Atlantic Swordfish Fisheries (2005 – 2009)

North Atlantic Swordfish Quota (mt dw)		2005	2006	2007	2008 (preliminary)	2009
Baseline Quota		2,937.6	2,937.6	2,937.6	2,937.6	2,937.6
Quota Carried Over		3,359.1	4,691.2	1,468.8	1,468.8	1,468.8
Adjusted quota		6,296.7	7,628.8	4,406.4	4,406.4	4,406.4
Quota Allocation	Directed Category	5,895.2	7,246.1	3,601.9	3,620.7	3,639.5
	Incidental Category	300.0	300.0	300.0	300.0	300.0
	Reserve Category	101.5	82.7	504.5	485.7	466.9
Utilized Quota	Landings	1,471.8	1,291.5	1,167.5	1,695.7	TBD
	Reserve Transfer to Canada	18.8	18.8	18.8	18.8	18.8
Total Underharvest		4,806.1	6,318.5	3,220.1	2,691.9	TBD
Dead Discards		114.9	154.9	149.2	149.8	TBD
Carryover Available		4,691.2	1,468.8	1,468.8	1,468.8	TBD
South Atlantic Swordfish Quota (mt dw)		2005	2006	2007	2008	2009
Baseline Quota		75.2	90.2	75.2	75.2	75.2
Quota Carried Over		319.3	394.5	75.2	75.2	75.2
Adjusted quota		394.5	484.7	150.4	150.4	150.4
Landings		0.0	0.0	0.0	0.0	TBD
Carryover Available		394.5	75.2	75.2	75.2	75.2

2. Regulatory Clarifications and Modifications

This proposed rule would also modify and clarify existing regulations as outlined below.

a. Swordfish Minimum Size.

Swordfish minimum size requirements would be simplified per a request from NMFS Enforcement. Currently, the regulation (50 CFR 635.20 (f)(1)) specifies three minimum size measurement methods for swordfish and swordfish damaged by shark bites. These measurements are 29 inches curved length from cleithrum to caudal keel (CK), 47 inches straight-line lower jaw forked length (LJFL), and 33 lbs dressed weight (dw). These three measurements, however, are equal in effect and all refer to the same size of fish. To simplify compliance determinations, the proposed rule would specify a singular measurement method for cases where the head is naturally attached to the fish, also referred to as “whole”, and a separate singular measurement method for cases where the head has been removed from

the fish, also referred to as “dressed.”

For cases where the head remains naturally attached to the swordfish (whole), a LJFL measurement of 47 inches will be the sole method for determining if a retained swordfish meets the minimum size requirement. This measurement will also apply to whole swordfish damaged by shark bites. For cases where the head has been removed from the fish (dressed), a CK measurement of 29 inches will be the sole method for determining if a retained swordfish meets the minimum size requirement. This measurement will also apply to dressed swordfish carcasses damaged by shark bites. The proposed rule will simplify enforcement efforts and NMFS does not expect the proposed action to have any impacts on swordfish fishermen.

b. Shark Identification Workshops.

Current regulations (50 CFR 635.8(b)) only allow for Atlantic shark dealer or proxy certificates to be issued at Atlantic shark identification workshops. These certificates can only be issued to an individual or entity that currently

holds a valid shark dealer permit or to a proxy for that individual or entity. However, formal certification at an Atlantic shark identification workshop is a prerequisite for obtaining a new shark dealer permit, or renewing an expired permit (50 CFR 635.8(b)(5)). As such, individuals or entities that would like to become new shark dealers, and persons holding expired shark dealer permits, are unable to obtain or renew a permit under the current regulations because they cannot present a formal certification of completing a workshop with their shark dealer permit application. Under this proposed rule, NMFS would authorize the issuance of “participant certificates” to attendees who do not possess a valid shark dealer permit at the time of workshop attendance. These participant certificates would offer proof of workshop completion for any individuals attempting to obtain a new shark dealer permit, or renew an expired shark dealer permit. Issuing participant certificates to workshop attendees would not have any adverse impacts, but would instead better

accommodate the issuance of shark dealer permits to new entrants and persons holding expired shark dealer permits.

c. Observer Requirements.

As was highlighted by the 100 percent observer coverage requirement in the Gulf of Mexico, many bycatch species such as bluefin tuna incidentally caught in the pelagic longline fishery are discarded without being brought on board even if an observer is on board. While this is done to maximize the efficiency of fishing, this activity hinders the ability of observers to collect biological samples for research. As such, this proposed rule would require incidentally caught, dead HMS or other species to be brought on board at the request of the observer. Further clarifications regarding this reasonable assistance requirement include: allowing the measurement of decks, codends, and holding bins; providing the observer with a safe work area; collecting bycatch when requested by the observer; collecting and carrying baskets of fish when requested by the observer; allowing the observer to collect biological data and samples; providing adequate space for storage of biological samples.

This should allow for the opportunity to collect biological samples from dead individuals, would have minimal to no additional impact on population biomass, and would have minimal impact on the fishing fleet. Haulback may be slowed to allow for the recovery of the fish that would normally be discarded dead. However, NMFS does not expect this activity to cause additional hardship or training, as most fish are brought on board. Additionally, to the extent that a particular set catches a large number of fish to be discarded, the observer will work to ensure fishing operations are disrupted as little as possible to ensure additional fish to not die on the line.

d. Change in Address.

Changes in permit application information are currently required to be made in writing, except in the case of Atlantic tunas or an HMS Charter/Headboat permit, wherein the vessel owner or operator must report the change by phone or internet (50 CFR 635.4(i)). Under the proposed rule, the Atlantic Tunas Longline Limited Access Permit (a permit category within the Atlantic tunas permit) holders would be required to report any changes to the information submitted in their application to the NMFS in writing to a designated address. Written submission of information changes would provide

NMFS with a robust record of updates. Vessel owners or operators possessing an open access vessel permits for Atlantic tunas permit, HMS Charter/Headboat permit, or HMS Angling category permit would still report changes by phone or internet to a number or website designated by NMFS. Altering the method to change permit information should not create significant hardship to permit holders as Atlantic Tunas Longline Limited Access Permit Holders are already required to provide written updates for their Atlantic shark and swordfish permits, which are issued by the Southeast Regional Office (SERO). The proposed rule would make permit information changes easier since one request can be used to alter all limited access permits issued by SERO.

e. HMS Importation Information Requirements

Currently, the regulatory text regarding international trade permits stipulates that certain information must be provided on the consignment documents that accompany certain imported HMS species (specifically Atlantic, Pacific and Southern bluefin tuna, frozen bigeye tuna, and swordfish). As such, when the required data fields change per international agreements, NMFS must conduct rulemaking to change the data fields in the regulations. Depending on the rulemaking schedule, this could lead the United States to be out of compliance with international agreements. Under this proposed rule, the documentation requirements would become more general, and the regulatory text would require "correct and complete information" on each consignment document. The more general documentation requirements would give NMFS the flexibility to request data necessary to fulfill international recommendations. This change would have no new impacts on HMS importers. The public would still have an opportunity to comment on substantial changes to the requirements through the Paperwork Reduction Act process and/or rulemaking process.

3. Adjustment and Implementation of Time/Area Closures in the Gulf of Mexico

Under current regulations (50 CFR 635.21 (a)(4)(ii) (iv)), the Madison-Swanson and Steamboat Lumps time/area closures within the Gulf of Mexico are set to expire on June 16, 2010. In Amendment 30b, the Gulf of Mexico Fisheries Management Council (GOMFMC) voted to remove this sunset provision, and on November 7, 2008,

the GOMFMC requested that NMFS implement similar measures. Consistent with this request, the proposed rule would eliminate this sunset provision and prevent expiration of the time/area closures on June 16, 2010. Eliminating the sunset provision of the Madison-Swanson and Steamboat Lumps time/area closures would not have any additional impacts to the original closures. The proposed rule would only remove the expiration date of the closures where no fishing activity is currently occurring (except for surface trolling from May October of each year).

In addition to the above request, the GOMFMC also asked NMFS to backstop a new, small time/area closure, called the "Edges 40 Fathom Contour," implemented by the Council. This proposed rule would respond to the request and establish the time/area closure in the northwestern Gulf of Mexico. The boundaries of this closure are defined by the coordinates: NW = 28° 51'N, 85° 16'W; NE = 28° 51'N, 85° 04'W; SW = 28° 14'N, 84° 54'W; SE = 28° 4'N, 84° 42'W. No records of pelagic longline sets exist within the proposed closure area between 1995 and 2006, or of bottom longline sets between 1996 and 2006. The extent of HMS recreational and charter/headboat (CHB) fishing activity within the proposed closure area is unknown. However, because the Edges 40 Fathom Contour would be closed for only four months, most recreational fishing activity would be allowed. These open months coincide with a period of increased HMS recreational fishing activity in the eastern Gulf of Mexico. Therefore, NMFS does not expect the implementation of the Edges 40 Fathom Contour time/area closure to have any significant adverse impacts.

Request for Comments

Comments on this proposed rule may be submitted at public hearings (see **DATES** and **ADDRESSES**), or via mail, fax, or online at <http://www.regulations.gov> by September 4, 2009. NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steve Durkee at (301) 713-2347 at least 5 days prior to the hearing date.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is

prohibited from the hearing room; attendees will be called to give their comments in the order in which they register to speak; the attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the meeting. For individuals unable to attend a hearing, NMFS also solicits written comments on this proposed rule (see **DATES** and **ADDRESSES**).

Classification

The Acting Assistant Administrator has determined that this proposed rule is consistent with the Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The certification reads:

Swordfish Quotas

NMFS published a final rule on October 5, 2007 (72 FR 56929) that established the 2,937.6 mt dw and 75.2 mt dw yearly baseline quotas for the North and South Atlantic swordfish, respectively; created an underharvest carryover cap of 50% the baseline quota for North Atlantic swordfish and 100% the baseline quota for South Atlantic swordfish; and transferred 18.8 mt dw of quota to Canada from the reserve category. These actions were based upon ICCAT recommendations 06–02 and 06–03. The North Atlantic swordfish provisions in recommendation 06–02 were extended through 2009 by ICCAT recommendation 08–02.

These 2009 annual specifications are necessary to implement the 2006 and 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) quota recommendation, as required by the Atlantic Tunas Convention Act, and to achieve domestic management objectives under the Magnuson-Stevens Act. This proposed rule would adjust the 2009 baseline quotas for the North and South Atlantic swordfish fisheries for the 2009 fishing year (January 1, 2009, through December 31, 2009) to account for 2008 underharvests per 50 part 635.27(c) and transfer 18.8 metric tons (mt) dressed weight (dw) to Canada from the reserve category. Consistent with Federal regulation (50 CFR part 635.27(c)(1)), the

2009 North Atlantic swordfish directed baseline quotas plus the 2008 underharvests would be divided equally between the semiannual periods of January through June and July through December, 2009. The 2009 adjusted quotas are 4,406.4 mt dw for North Atlantic swordfish and 150.4 mt dw for South Atlantic swordfish (Table 1).

The commercial swordfish fishery is comprised of fishermen who hold a swordfish directed, incidental, or handgear limited access permits (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the Small Business Administration. As of June 2009, there were approximately 185 fishermen with a directed swordfish LAP, 69 fishermen with an incidental swordfish (LAP), and 84 fishermen with a handgear (LAP) for swordfish. Based on the 2007 swordfish ex-vessel price per pound of \$3.88, the 2009 North Atlantic swordfish baseline quota could result in revenues of \$25,127,780 (6,476,232 lbs dw * \$3.88) and \$643,246 (165,785 lbs dw * \$3.88) for South Atlantic quota if the quota was fully utilized. As proposed in this action, the 2009 baseline quotas would be adjusted to account for the 2008 underharvest which could result in additional revenues for the North and South Atlantic swordfish fisheries of \$37,691,675 and \$1,286,499, respectively, for fully utilized quotas. Potential revenues on a per vessel basis, considering a total of 338 swordfish permit holders, could be \$111,514 for the North Atlantic swordfish fishery and \$3,806 for the South Atlantic swordfish fishery. However, in both the North and South Atlantic swordfish fisheries, the pelagic longline fleet has not caught the entire U.S. swordfish quota for many years. For example, the total 2008 North Atlantic swordfish landings were 1,695.7 mt dw and the current 2009 landings for North Atlantic swordfish, as of April 30, 2009, are 411.1 mt dw. Therefore, because the United States is not expected to catch its entire quota, and the quota adjustments are the same in 2009 as in 2008, NMFS does not expect these quota adjustments to have a significant economic impact on a large number of small entities.

Administrative Regulatory Modifications and Clarifications

In addition to adjusting the North and South Atlantic swordfish quotas, NMFS is also proposing the following five administrative modifications and clarifications to the regulations: 1) clarifying minimum size requirements for whole and dressed swordfish; 2) issuing “participant certificates” at shark identification workshops to attendees that do not have a dealer license; 3) requiring that any dead bycatch in the pelagic longline fishery be brought on board, at the observer’s request, for biological sampling; 4) requiring that any changes in information from the application for Atlantic Tuna Longline Limited Access Permit be requested in writing; and 5) clarifying the information that is to be included on consignment documents for the importation of Atlantic, Pacific and Southern bluefin tuna, frozen bigeye tuna, and swordfish. These changes are mostly

administrative in nature and it is unlikely that they would result in any economic impacts on individuals or small businesses. Therefore, NMFS does not expect these regulatory modification and clarifications to result in significant impacts on a substantial number of small entities.

Adjustment and Implementation of Time/Area Closures in the Gulf of Mexico

Under current regulations (50 CFR 635.21 (a)(4)(ii) (iv)), the Madison-Swanson and Steamboat Lumps time/area closures within the Gulf of Mexico are set to expire on June 16, 2010. In Amendment 30b, the Gulf of Mexico Fisheries Management Council (GOMFMC) voted to remove this sunset provision, and on November 7, 2008, the GOMFMC requested that NMFS implement similar measures. Consistent with this request, the proposed rule would eliminate this sunset provision and prevent expiration of the time/area closures on June 16, 2010. Eliminating the sunset provision of the Madison-Swanson and Steamboat Lumps time/area closures would not have any additional impacts to the original closures. The proposed rule would only remove the expiration date of the closures where no fishing activity is currently occurring (except for surface trolling from May October of each year).

In addition to the above request, the GOMFMC also asked NMFS to backstop a new, small time/area closure, called the “Edges 40 Fathom Contour,” implemented by the Council. This proposed rule would comply with the request and establish the time/area closure in the northwestern Gulf of Mexico. No records of pelagic longline sets exist within the proposed closure area between 1995 and 2006, or of bottom longline sets between 1996 and 2006. The extent of HMS recreational and charter/headboat (CHB) fishing activity within the proposed closure area is unknown. However, because the Edges 40 Fathom Contour would be closed for only four months, most recreational fishing activity would be allowed. These open months coincide with a period of increased HMS recreational fishing activity in the eastern Gulf of Mexico.

In order to examine the baseline universe of entities potentially affected by the two Gulf of Mexico time/area closure actions, NMFS analyzed the number of commercial swordfish, shark, and tuna longline permits that were issued as of May 2008 in Destin, FL; Panama City, FL; Apalachicola, FL; and Madeira Beach/St. Petersburg/Clearwater FL. Also, NMFS examined the number of HMS CHB (CHB) permits, and HMS Angling permits that were issued in these same locations. There could be as many as 21 commercial permit holders in the potentially affected communities that possess “valid” pelagic longline permits because they possess the requisite three limited access permits for swordfish, shark and tunas longline permits. These vessels are primarily home ported in the Panama City, FL and the Madeira Beach/St. Petersburg, FL areas. The number of potentially affected commercial shark permit holders could be as many as 39 vessels. These vessels are also primarily home ported in the Panama City, FL and Madeira Beach/

St. Petersburg/Clearwater, FL areas. There are a relatively large number of HMS CHB vessels (70) in the communities of Destin, FL; Panama City, FL; and Madeira Beach/St. Petersburg/Clearwater, FL.

The total number of HMS Angling category permits issued and of May 2008 was 26,933. These permits were distributed among many communities, both large and small, primarily along the eastern seaboard and the Gulf of Mexico. Approximately 500 1000 HMS Angling category permits were issued to recreational anglers located from Destin, FL to St. Petersburg, FL

In summary, the preferred alternative analyzed for this proposed rule could potentially impact HMS commercial permit holders possessing the requisite three permits to fish with pelagic longline gear (~21 vessels), commercial shark permit holders (~39 vessels), HMS CHB permit holders (~70 vessels), and HMS Angling category permit holders (~1000 vessels). In total, the preferred alternative could impact approximately 1,130 HMS permit holders. The HMS Angling category permit is strictly for recreational fishing activities, and does not authorize the commercial sale of any HMS. Thus, HMS Angling category permit holders are not considered small business entities. Therefore, about 130 of these permit holders are considered small entities. However, as described in the draft EA accompanying this rule, no records of pelagic longline sets exist within the proposed Edges 40 Fathom Contour closure area between 1995 and 2006, or of bottom longline sets between 1996 and 2006. Furthermore, eliminating the sunset provision of the Madison-Swanson and Steamboat Lumps time/area closures would not alter fishing practices from the status quo. The extent of HMS recreational and charter/headboat (CHB) fishing activity within the proposed closure area is unknown. However, because the Edges 40 Fathom Contour would be closed for only four months, most recreational fishing activity would be allowed. These open months coincide with a period of increased HMS recreational fishing activity in the eastern Gulf of Mexico.

Conclusion

This proposed rule would not result in any increase in fishing mortality, change basic fishing practices, or pose any significant impacts to the human environment. Therefore, NMFS does not expect the administrative modification and clarifications or the adjustment of the Gulf of Mexico time/area closures to have significant economic impacts on small entities.

List of Subjects

50 CFR Part 300

Reporting and recordkeeping requirements.

50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: July 30, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fishery Service.

For the reasons set out in the preamble, 50 CFR parts 300 and 635 are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

1. The authority citation for subpart M continues to read as follows:

Authority: 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 300.185, paragraph (a)(2)(vii) is revised to read as follows:

§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) * * *

(2) * * *

(vii) For fish or fish products except shark fins regulated under this subpart that are entered for consumption, the permit holder must provide correct and complete information, as requested by NMFS, on the original consignment document that accompanied the consignment.

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

4. In § 635.2, the following definition is added within the correct alphabetic order.

§ 635.2 Definitions.

* * * * *

Edges 40 Fathom Contour closed area means a parallelogram-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28° 51'N. lat., 85° 16'W. long.; 28° 51'N. lat., 85° 04'W. long.; 28° 14'N. lat., 84° 42'W. long.; 28° 14'N. lat., 84° 54'W. long.

* * * * *

5. In § 635.4, paragraph (i) is revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(i) Change in application information. A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must

be submitted in writing to NMFS, to an address designated by NMFS with the issuance of each permit. For HMS charter/headboat and Atlantic tunas vessel permits other than tuna longline, the vessel owner must report the change by phone or internet to a number or website designated by NMFS. For certain information changes, a new permit may be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change

* * * * *

6. In § 635.7, paragraph (f) is added to read as follows:

§ 635.7 At-sea observer coverage.

* * * * *

(f) Vessel responsibilities. An owner or operator of a vessel required to carry one or more observer(s) must provide reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(1) Measuring decks, codends, and holding bins.

(2) Providing the observer(s) with a safe work area.

(3) Collecting bycatch when requested by the observer(s).

(4) Collecting and carrying baskets of fish when requested by the observer(s).

(5) Allowing the observer(s) to collect biological data and samples.

(6) Providing adequate space for storage of biological samples.

7. In § 635.8, paragraphs (b)(4) and (5) and (c) (4) and (5) are revised and paragraph (b) (6) is added to read as follows:

§ 635.8 Workshops.

* * * * *

(b) * * *

(4) Only dealers issued a valid shark dealer permit may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant to § 635.4(g)(2), which first receives Atlantic shark by way of purchase, barter, or trade. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a

place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by way of purchase, barter, or

trade by contacting NMFS at an address designated by NMFS.

(c) * * *

(4) An Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade.

(5) A vessel owner, operator, shark dealer, proxy for a shark dealer, or participant who is issued either a protected species workshop certificate or an Atlantic shark identification workshop certificate may not transfer that certificate to another person.

* * * * *

8. In § 635.20, the first sentence of paragraph (a) and paragraph (f) are revised to read as follows:

§ 635.20 Size Limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas for a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4. * * *

* * * * *

(f) *Swordfish.*

(1) For a swordfish that has its head naturally attached, the LJFL is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a whole (head on) North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 47 inches (119 cm) LJFL. A swordfish with the head naturally attached that is damaged by shark bites may be retained only if the length of the remainder of the fish is equal to or greater than 47 inches (119 cm) LJFL.

(2) If the head or tail of a swordfish has been removed prior to or at the time

of landing, the CK measurement is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a dressed North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 29 inches (73 cm) CK length. A swordfish with the head removed that is damaged by shark bites may be retained only if the length of the remainder of the carcass is equal to or greater than 29 inches (73 cm) CK length.

(3) No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(4) Except for a swordfish landed in a Pacific state and remaining in that Pacific state of landing, a swordfish, or part thereof, not meeting the minimum size measurements specified in § 635.20(f)(1) or (2) will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a swordfish statistical document attesting that the swordfish was lawfully imported. Refer to § 300.186 of this title for the requirements related to the swordfish statistical document.

(5) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

9. In § 635.21, paragraphs (a) (4) (ii) and (iii) are revised and paragraph (a) (4) (v) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(a) * * *

(4) * * *

(ii) From November through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling, as specified below under paragraph (a)(4)(iv) of this section.

* * * * *

(v) From January through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Edges 40 Fathom Contour closed area, as defined in § 635.2.

* * * * *

10. In § 635.71, paragraphs (d) (11) and (14) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(11) Receive, purchase, trade, or barter for Atlantic sharks without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

* * * * *

(14) Receive, purchase, trade, or barter for Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the

dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, a valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

* * * * *

[FR Doc. E9-18748 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-22-C

Notices

Federal Register

Vol. 74, No. 149

Wednesday, August 5, 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.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act

August 3, 2009.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Directive to the Commissioner of U.S. Customs and Border Protection.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Burkina Faso shall be treated as “handloomed and handmade articles” and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Burkina Faso with an appropriate visa will qualify for duty-free treatment.

EFFECTIVE DATE: August 5, 2009.

FOR FURTHER INFORMATION CONTACT: Don Niewiarowski, Jr., International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Sections 112(a) and 112(b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (“AGOA”), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) (“AGOA Acceleration Act”) (19 U.S.C. §§ 3721(a) and (b)(6)); Sections 2 and 5 of Executive Order No. 13191 of January 17, 2001; Sections 25-27 and Paras. 13-14 of Presidential Proclamation 7912 of June 29, 2005.

AGOA provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including handloomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. The AGOA Acceleration Act further

expanded AGOA by adding ethnic printed fabrics to the list of textile and apparel products made in the beneficiary sub-Saharan African countries that may be eligible for the preferential treatment described in section 112(a) of the AGOA. In Executive Order 13191 (January 17, 2001) and Presidential Proclamation 7912 (June 29, 2005), the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, folklore articles, or ethnic printed fabrics. See 66 FR 7271, 7271-72 (January 22, 2001) and 70 FR 37959, 37961 & 63 (June 30, 2005).

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA. See 66 FR 7837. The first digit of the visa number corresponds to one of the groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping “9” is reserved for handmade, handloomed, folklore articles, or ethnic printed fabrics.

CITA consulted with Burkina Faso authorities on July 21, 2009 and has determined that handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, place mats, and tablecloths), and handmade articles made from fabrics handloomed in Burkina Faso, if produced in and exported from Burkina Faso, are eligible for preferential tariff treatment under section 112(a) of the AGOA, as amended. After further consultations with Burkina Faso authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles. In the letter published below, CITA directs the Commissioner of U.S. Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if

accompanied by an appropriate “AGOA visa in grouping 9.”

Maria D’Andrea,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 3, 2009.

Commissioner,
U.S. Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (“CITA”), pursuant to Sections 112(a) and (b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (“AGOA”), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) (“AGOA Acceleration Act”) (19 U.S.C. §§ 3721(a) and (b)(6)), Executive Order No. 13191 of January 17, 2001, and Presidential Proclamation 7912 of June 29, 2005, has determined, effective on August 5, 2009, that the following articles shall be treated as “handloomed, handmade, folklore articles under the AGOA: handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, placemats, and tablecloths), and handmade articles made from handloomed fabrics, if made in Burkina Faso from fabric handloomed in Burkina Faso. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping “9”, in accordance with the provisions of the Visa Arrangement between the Government of Burkina Faso and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After further consultations with Burkina Faso authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles.

Maria D’Andrea,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E9-18839 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-DS

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Dealer and Interview Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 5, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Turner, (305) 361-4482 or Steve.Turner@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishery quotas are established for many species in the fishery management plans developed by both the Gulf of Mexico Reef Fish Fishery Management Council and the South Atlantic Fishery Management Council. The Southeast Fisheries Science Center has been delegated the responsibility to monitor these quotas. To do so in a timely manner, seafood dealers that handle these species are required to report the purchases (landings) of these species. The frequency of these reporting requirements varies depending on the magnitude of the quota (*i.e.*, lower quota usually require more frequent reporting) and the intensity of fishing effort. The most common reporting frequency is twice a month; however, some fishery quotas, *e.g.*, the mackerel gill net, necessitate weekly or by the trip.

In addition, information collection included in this family of forms includes interview with fishermen to gather information on the fishing effort, location and type of gear used on individual trips. This data collection is conducted for a subsample of the fishing trips and vessel/trips in selected commercial fisheries in the Southeast region. Fishing trips and individuals are selected at random to provide a viable statistical sample. These data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations.

II. Method of Collection

Dealer reports may be e-mailed, faxed or mailed. Information from fisherman is obtained by face-to-face interviews.

III. Data

OMB Control Number: 0648-0013.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 13,755.

Estimated Time per Response: Fifteen minutes for a dealer report in the golden crab, rock shrimp and Puerto Rican prohibited coral dealers; 5 minutes for a dealer quota monitoring report in the Coastal Fisheries and mackerel fisheries; 5 minutes for an annual vessel interview; 10 minutes for other interviews; 10 minutes for a dealer and vessel report in the eastern Gulf of Mexico runaround gill mackerel fishery; and 5 minutes for a wreckfish dealer report.

Estimated Total Annual Burden Hours: 1,659.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-18670 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Information for Share Transfer in the Wreckfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 5, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rich Malinowski, (727) 824-5305 or rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) Southeast Region manages the wreckfish fishery of the Exclusive Economic Zone (EEZ) in or from the South Atlantic under the Fishery Management Plan for Snapper-Grouper (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented through regulations at 50 CFR Part 622 under the authority of the Magnuson-Stevens Conservation and Management Act.

The recordkeeping and reporting requirements at 50 CFR Part 622 form the basis for this collection of information. NMFS Southeast Region requests, from participating wreckfish participants, information necessary to transfer ownership of percentage shares. The information collected includes the percentage of the shares transferred, dollar value of the transfer and the name, address, and employer identification number of the transfer recipient. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the

wreckfish fishery in or from the South Atlantic EEZ.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0262.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Non-profit institutions; business or other for-profit organizations.

Estimated Number of Respondents: 4.

Estimated Time per Response: 15 minutes per transfer.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost to Public: \$162 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–18671 Filed 8–4–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Subsistence Fishery for Pacific Halibut in Waters Off Alaska: Registration and Marking of Gear

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 5, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This submission seeks renewal of collection-of-information requirements that are part of the program for the Pacific halibut subsistence fishery. The program includes requirements for registration to participate in the fishery and the marking of certain types of gear used in this fishery. The registration requirement is intended to allow qualified persons to practice the long-term, customary, and traditional harvest of Pacific halibut for food in a noncommercial manner. The gear-marking requirement aids in enforcement and in actions related to gear damage or loss. The registration information may be submitted by an individual or as a list of multiple individuals from an Alaska Native Tribe.

II. Method of Collection

Applications may be submitted online or as e-mail attachments; paper forms may be sent by mail or fax.

III. Data

OMB Control Number: 0648–0460.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; State, local, and Tribal government; and individuals or households.

Estimated Number of Respondents: 27,963.

Estimated Time per Response:

Subsistence halibut registration certificate (SHARC) application, 10 minutes; and subsistence halibut gear marking, 15 minutes.

Estimated Total Annual Burden Hours: 1,206.

Estimated Total Annual Cost to Public: \$17,663.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 31, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–18672 Filed 8–4–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Changed Circumstances Review and Notice of Intent to Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 5, 2009.

SUMMARY: On March 24, 2009, the Department of Commerce (the

Department) published a notice of initiation of a changed circumstances review of the antidumping duty order on frozen warmwater shrimp from Thailand to consider whether it is appropriate to revoke the order in part with respect to two companies, Phatthana Frozen Food Co., Ltd. (PFF) and Sea Wealth Frozen Food Co., Ltd. (Sea Wealth), pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b) and 351.222. *See Certain Frozen Warmwater Shrimp from Thailand: Initiation of Antidumping Duty Changed Circumstances Review*, 74 FR 12308 (Mar. 24, 2009) (*Initiation Notice*). Upon analyzing the information provided by the two companies, we preliminarily determine that PFF and Sea Wealth should be revoked from the antidumping duty order on certain frozen warmwater shrimp from Thailand.

FOR FURTHER INFORMATION CONTACT: Henry Almond; AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-0049.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From Thailand*, 70 FR 5145 (Feb. 1, 2005) (*Thai Shrimp Order*).

Subsequent to the issuance of this order, the Thai Government challenged the Department's practice of offsetting dumped sales with non-dumped sales in the LTFV investigation of certain frozen warmwater shrimp from Thailand before the World Trade Organization. In November 2008, the Department initiated a Section 129 proceeding to reconsider this practice with respect to Thai shrimp, and in January 2009 it issued a final determination in that proceeding which resulted in the revocation of the order related to shrimp produced and exported by two entities—Thai I-Mei and the Rubicon Group. *See Implementation of the Findings of the WTO Panel in United States—Antidumping Measure on Shrimp From Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping*

Duty Order on Frozen Warmwater Shrimp From Thailand, 74 FR 5638, 5638 (Jan. 30, 2009) (*Section 129 Implementation*). For purposes of this determination the Department defined the Rubicon Group as consisting of the following nine companies, which were the group members existing at the time of the LTFV investigation: Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd., Phatthana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., and Wales & Co. Universe Limited. *See Section 129 Implementation*, 74 FR at 5639.

On February 5, 2009, the Rubicon Group requested that the Department conduct an expedited changed circumstances review under 19 CFR 351.221(c)(3)(iii) to consider also revoking PFF and Sea Wealth from the *Thai Shrimp Order*. According to the Rubicon Group, although these two companies were not included in the Department's margin calculations in the LTFV investigation, the Department has treated them as part of the Rubicon Group in subsequent segments of this proceeding. In this request, the Rubicon Group also asked that any revocation for PFF and Sea Wealth be made effective January 16, 2009, the effective date of the *Section 129 Implementation*.

On February 12, 2009, we requested that the Rubicon Group clarify its changed circumstances review request to identify the relevant statutory provision under which its request fell. On February 13, 2009, the Rubicon Group clarified its changed circumstances review request, stating that it would be appropriate for the Department to evaluate its request using either a "collapsing" analysis under 19 CFR 351.401(a) or the Department's "successor-in-interest" analysis, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b).

On February 18, 2009, we requested further information from the Rubicon Group with respect to the four factors examined by the Department in a successor-in-interest determination: Management; production facilities; supplier relationships; and customer base. On March 13, 2009, the Rubicon Group submitted the requested information.

On April 29, 2009, we placed documents from the LTFV investigation relating to the corporate structure of the Rubicon Group as it existed during the LTFV investigation on the record of this changed circumstances review. On that date, we also requested additional

information from the Rubicon Group. On May 27, 2009, the Rubicon Group submitted the requested information.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size. The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and

¹ "Tails" in this context means the tail fan, which includes the telson and the uropods.

prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216, the Department will conduct a changed circumstances review upon receipt of information concerning, or request from an interested party for review of, an antidumping duty order which shows changed circumstances sufficient to warrant review of the order. In this case, the Department found that the information submitted by the Rubicon Group provided evidence of changed circumstances sufficient to warrant a review. *See Initiation Notice*, 74 FR at 12309. Thus, in accordance with section 751(b) of the Act, the Department initiated a changed circumstances review to determine whether the current Rubicon Group is the successor-in-interest to the Rubicon Group as it existed at the time of the LTFV investigation. *Id.* In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier

relationships; (4) customer base. *See Brake Rotors From the People’s Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941 (Nov. 18, 2005); and *Notice of Final Results of Changed-Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (Jan. 2, 2002). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company’s resulting operation is not materially dissimilar to that of its predecessor. *See Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (Mar. 1, 1999); and *Industrial Phosphoric Acid From Israel: Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (Feb. 4, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

The Rubicon Group has submitted information demonstrating that PFF and Sea Wealth are fully integrated into the Rubicon Group by virtue of being owned and controlled by other Rubicon Group companies and that the two companies are strategically engaged with the other Rubicon Group companies in the production and sale of subject merchandise to the United States. *See the July 29, 2009, memorandum from Henry Almond, Analyst, to James Maeder, Director, entitled, “Successor-In-Interest Determination for the Rubicon Group in the Changed Circumstances Review of Certain Frozen Warmwater Shrimp from Thailand”* at pages 3–6 (Successor Memo). Further, the addition of PFF and Sea Wealth to the Rubicon Group has not altered the Rubicon Group’s production capacity or significantly changed the Rubicon Group’s production facilities. *See the Successor Memo* at page 5. Finally, the Rubicon Group continues to source its shrimp from the same suppliers and sell its shrimp to the same and similar customers as it did during the POI. *See the Successor Memo* at pages 5–6.

Based on the information submitted by the Rubicon Group, we preliminary find that there have been no significant changes in any of the four factors

outlined above since the POI. Regarding its management structure, the Rubicon Group has submitted information demonstrating that PFF and Sea Wealth are fully integrated into the Rubicon Group by virtue of being owned and controlled by other Rubicon Group companies and that the two companies are involved with the other Rubicon Group companies in the production and sale of subject merchandise to the United States. Because the Rubicon Group has demonstrated that there has been no change in the management of the Rubicon Group as a result of the addition of PFF and Sea Wealth, we preliminarily find there has been no significant change in the management of the Rubicon Group since the POI. Regarding the Rubicon Group’s production capacity and facilities, although the Rubicon Group has closed one production facility and opened one new facility since the POI, the group’s overall production capacity and production and packaging processes have not changed since the POI. Thus, based upon the information submitted by the Rubicon Group, we preliminarily find that there has been no significant change in the Rubicon Group’s production facilities since the POI. Regarding the Rubicon Group’s supplier relationships, the Rubicon Group has submitted information demonstrating that its suppliers and supplier relationships have not changed since the POI. Accordingly, we preliminarily find that there has been no significant change in the Rubicon Group’s suppliers or supplier relationships since the POI. Regarding the Rubicon Group’s customer base, the Rubicon Group submitted POI and current customer lists which demonstrate that there has been no significant change in its customers since the POI. Based upon this information, we preliminarily find that there has been no significant change in the Rubicon Group’s customer base since the POI. For further discussion of the four factors, *see the Successor Memo* at pages 3–6.

Accordingly, we preliminarily determine that the Rubicon Group in its current form, including PFF and Sea Wealth, is the successor-in-interest to the Rubicon Group as it existed during the POI of the LTFV investigation. Thus, if these preliminary results are adopted in our final results of this changed circumstances review, we will consider PFF and Sea Wealth to be part of the Rubicon Group and, therefore, revoke them from the *Thai Shrimp Order*.

This finding is consistent with our treatment of these companies as a single entity in the *06–07 Final Results*, the most recently completed administrative

review. *See Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 50933, 50937 (Aug. 29, 2008).

Finally, in its changed circumstances review request the Rubicon Group requested that any resulting revocation for PFF and Sea Wealth be effective as of January 16, 2009 (the effective date of the *Section 129 Implementation*). Consistent with our treatment of companies excluded from antidumping duty orders which are subject to subsequent successor-in-interest determinations, we will apply this successor-in-interest determination retroactively to the dates PFF and Sea Wealth were formed and became part of the Rubicon Group (*i.e.*, August 31, 2005, for PFF and July 24, 2003, for Sea Wealth). *See, e.g., Stainless Steel Wire Rod From Italy: Notice of Final Results of Changed Circumstances Antidumping Duty Review*, 71 FR 24643, 24644 (Apr. 26, 2006). Because these dates are prior to January 16, 2009, we find that it is appropriate to revoke the antidumping duty order with respect to frozen warmwater shrimp produced and exported by PFF and Sea Wealth as of January 16, 2009, consistent with our treatment of the other members of the Rubicon Group.² *See Section 129 Implementation*, 74 FR at 5639.

Public Comment

Parties wishing to comment on these results must submit briefs to the Department within 30 days after the publication of this notice in the **Federal Register**. Parties will have five days subsequent to this due date to submit rebuttal briefs. Parties who submit comments or rebuttal briefs in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any requests for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. In accordance with 19 CFR 351.216(e), the Department will issue its final results of review within 270 days after the date on which the changed circumstances review was initiated (*i.e.*, no later than December 21, 2009).

We are issuing and publishing this notice in accordance with sections

² We note that this revocation will apply to merchandise produced by any Rubicon Group member and exported by PFF or Sea Wealth, as well as to merchandise produced by PFF or Sea Wealth and exported by any other Rubicon Group member.

751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: July 29, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-18724 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-580-810)

Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-5050.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2009, the Department of Commerce ("Department") published a notice of initiation of an administrative review of Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea covering the period December 1, 2007 through November 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009). The preliminary results of this administrative review are currently due no later than September 2, 2009.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the "Act"), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department needs additional time to analyze a significant amount of information the parties submitted, and to determine whether any additional information is required. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 245 days to 365 days. The preliminary results will now be due no later than December 31, 2009. Unless extended, the final results continue to be due 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1) of the Department's regulations.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-18729 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-403-801]

Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Fresh and Chilled Atlantic Salmon from Norway

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping Duty Changed Circumstances Review: Fresh and Chilled Atlantic Salmon from Norway

SUMMARY: In response to a request from Nordic Group AS, an exporter of fresh and chilled Atlantic Salmon from Norway, and pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c) (3), the Department is initiating a changed circumstances review of the antidumping order on fresh and chilled Atlantic Salmon from Norway. Based on the information received, we preliminarily determine that Nordic Group AS is the successor-in-interest to Nordic Group A/L for purposes of determining antidumping duty liability. Interested parties are

invited to comment on these preliminary results.

EFFECTIVE DATE: August 5, 2009.

FOR FURTHER INFORMATION CONTACT: John Conniff, Office of AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1009.

Background

Nordic Group A/L, as an exporter of subject fresh whole salmon from Norway to the U.S., requested a new shipper review (NSR) in 1995. See *Antidumping Duty Order: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 14920 (April 12, 1991). The Department issued the final results of the NSR, giving Nordic Group A/L a dumping margin of 0.00% in 1997. See *Fresh and Chilled Salmon from Norway: Final Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 1430 (January 10, 1997). On December 30, 2005, the Department published in the **Federal Register** the final results of the full sunset review of the antidumping duty order on fresh and chilled Atlantic Salmon from Norway. See *Fresh and Chilled Atlantic Salmon from Norway: Final Results of the Full Sunset Review of Antidumping Duty Order*, 70 FR 77378 (December 30, 2005) (*Norwegian Salmon Order*).

On June 12, 2009, Nordic Group AS filed a request for a changed circumstances review of the *Norwegian Salmon Order*, claiming that Nordic Group A/L changed its name to Nordic Group AS. Nordic Group AS requested that it receive the same antidumping duty treatment as is accorded to Nordic Group A/L. In addition, Nordic Group AS submitted documentation in support of its claim. Nordic Group AS requested that the Department combine the notice of initiation of the review and the preliminary results of review in a single notice as this review essentially involves only corporate name changes.

Scope of the Order

The product covered by this order is the species Atlantic salmon (*Salmo salar*) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called “king” or “quinnat”), Coho (“silver”), Sockeye (“redfish” or “blueback”), Humpback (“pink”) and Chum (“dog”). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice (“chilled”). Excluded

from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon was classifiable under item number 110.2045 of the Tariff Schedules of the United States Annotated. Atlantic salmon is currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 0302.12.0003 and 0302.12.0004. The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. On June 12, 2009, Nordic Group AS submitted its request for a changed circumstances review. With its request, Nordic Group AS submitted certain information related to its claim that Nordic Group A/L changed its name to Nordic Group ASA and subsequently to Nordic Group AS., and that none of these name changes have affected the company’s management, sales operations, supplier relationships or customer based in any meaningful way. In accordance with section 751(b) of the Act and 19 CFR 351.216, the Department has determined that there is a sufficient basis to initiate a changed circumstances review to determine whether Nordic Group AS is the successor-in-interest to Nordic A/L.

In making a successor-in-interest determination in antidumping proceedings, the Department typically examines several factors including, but not limited to: (1) management; (2) production facilities; (3) supplier relationships, and (4) customer base. See, e.g., *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) and *Certain Cut-To-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005) (*Plate from Romania*), unchanged in the *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Cut-to-Length Carbon Steel Plate from Romania*, 70 FR 35624 (June 21, 2005).

While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. See, e.g., *Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Plate from Romania*, 70 FR 22847. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new the company the cash deposit rate of its predecessor. See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

In accordance with 19 CFR 351.221(c)(3)(i), we preliminarily determine that Nordic Group AS is the successor-in-interest to Nordic Group A/L. In its June 12, 2009, submission Nordic Group AS provided evidence supporting its claim to be the successor-in-interest to Nordic Group A/S. In its June 12, 2009, submission, Nordic Group AS states that during the course of the new shipper review, Nordic Group A/L (A/L indicating a cooperative), notified the Department that it had changed its name to Nordic Group ASA (indicating a publicly held limited liability company). Further, since that time, the name of the company was changed from Nordic Group ASA to its current name, Nordic Group AS (indicating a privately held limited liability company). Nordic Groups AS claims that these name changes have not affected the company’s management, sales operations, supplier relationships, or customer base in a meaningful way. This documentation consists of: (1) a affidavit of the CEO and Chairman of the Board of Nordic Group AS; (2) a Nordic Group A/L sales flyer showing the brand name “Fjord Fresh”; (3) a Nordic Group AS sales flyer showing the brand name “Fjord Fresh”; (4) supplier lists for both Nordic Group A/L and Nordic Group AS; and (5) a listing of current customers and customers from 1997.

The documentation described above demonstrates that there was little to no change in management structure, sales operations, supplier relationships, or customer base. For these reasons, we preliminarily find that Nordic Group AS

is the successor-in-interest to Nordic Group A/L and, thus, should receive the same antidumping duty treatment with respect to fresh and chilled Atlantic Salmon from Norway.

When “expedited action is warranted,” the Department may publish the notice of initiation and preliminary determination concurrently. See 19 CFR 351.221(c)(3)(ii); see also *Granular Polytetrafluoroethylene Resin from Italy: Initiation and Preliminary Results of Antidumping Changed Circumstances Review*, 68 FR 13672 (March 20, 2003). The Department has determined that such action is warranted because Nordic Group AS has provided *prima facie* evidence that Nordic Group AS is the successor-in-interest, and we have the information necessary to make a preliminary finding already on the record.

Based on the record evidence, we find that Nordic Group AS operates as the same business entity as Nordic Group A/L. Thus, we preliminarily determine that Nordic Group AS is the successor-in-interest to Nordic Group A/L.

Public Comment

Interested parties are invited to comment on these preliminary results. Case briefs from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Any interested party may request a hearing within 14 days of publication of this notice. Any hearing, if requested, will be held no later than 30 days after the date of publication of this notice, or the first workday thereafter. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated, or within 45 days if all parties agree to our preliminary results.

During the course of this antidumping duty changed circumstances review, cash deposit requirements for the subject merchandise exported by Nordic Group AS will continue to be the all others rate established in the investigation. See *Antidumping Duty Order: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 14920 (April 12, 1991). The cash deposit rate

will be altered, if warranted, pursuant only to the final results of this review.

We are issuing and publishing these preliminary results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216.

Dated: July 28, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-18734 Filed 8-4-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-817]

Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from United States Steel Corporation (U.S. Steel or Petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from Thailand. This administrative review covers imports of subject merchandise produced and exported by respondent G Steel Public Company Limited (G Steel). The period of review is November 1, 2007 through October 31, 2008.

We preliminarily determine that: (1) G J Steel Public Company Limited (G J Steel) is the successor-in-interest to Nakornthai Strip Mill Public Company Limited (Nakornthai); (2) because of G Steel's refusal to cooperate with the Department in the conduct of this administrative review, G Steel made sales of subject merchandise at less than normal value (NV); and (3) G J Steel and G Steel constitute a single entity.

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price and the NV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 5, 2009.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0408 or (202) 482-0469, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel from Thailand. See *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562 (November 29, 2001) (*Antidumping Duty Order*). On November 3, 2008, the Department published the opportunity to request an administrative review of, *inter alia*, hot-rolled steel from Thailand for the period November 1, 2007, through October 31, 2008. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 65288 (November 3, 2008).

In accordance with 19 CFR 351.213(b)(1), on December 1, 2008, Petitioner requested an administrative review of G Steel's sales of subject merchandise. Additionally, on December 1, 2008, G Steel and G J Steel submitted a request that the Department review both G Steel and G J Steel's sales. G Steel and G J Steel's submission further requested the Department to “treat both companies as affiliated, and as affiliated producers, as a single entity entitled to a single antidumping duty rate as a result of this administrative review.” On December 24, 2008, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period November 1, 2007, through October 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008).

On January 13, 2009, the Department issued its antidumping questionnaire to G Steel and G J Steel under separate cover letters. On February 1, 2009, G Steel and G J Steel submitted a combined section A questionnaire response (Section A Response). On March 12, 2009, prior to the deadlines for the remainder of their additional questionnaire responses, G Steel and G J Steel withdrew their requests for a review, and asked the Department to rescind the review with respect to G J Steel as no other party had requested a review of G J Steel. In their request for withdrawal, G Steel and G J Steel maintained they did not sell subject merchandise below normal value during this period of review, but explained that the ongoing worldwide financial crisis

prevented them from continuing to participate in the review. G Steel and G J Steel also stated their request for withdrawal comes within 90 days of the publication of the notice of initiation. Finally, both companies requested the return of information disclosed under the Department's Administrative Protective Order, to which request the Department acceded in its April 9, 2009 letter to G Steel and G J Steel.

On April 7, 2009, domestic interested party Nucor Corporation (Nucor) submitted comments in which Nucor argued the Department should treat the companies' withdrawal as a refusal to cooperate and should assign both companies a margin based on adverse facts available. See Nucor's Comments on G / G J Steel's Withdrawal, dated April 7, 2009 (Nucor's Comments). Nucor also insisted the Department should not terminate the review with respect to G J Steel. Nucor maintains there is sufficient evidence on the public record of this proceeding to establish that the Department should treat G Steel and G J Steel as a single entity. To do otherwise, Nucor maintains, would lead to a significant potential for "manipulation of price or production." On April 20, 2009, U.S. Steel submitted additional factual information for the record (U.S. Steel's Factual Information). On April 28, 2008, U.S. Steel submitted comments (U.S. Steel's Comments) arguing the Department should not rescind the review, either in whole or in part. Furthermore, U.S. Steel argued the Department should treat G Steel and G J Steel as a single entity and continue the review with respect to sales of subject merchandise by both producers.

On June 26, 2009, the Department rescinded the review with respect to G J Steel. See *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 30524 (June 26, 2009) (*Partial Rescission*). The Department did not, however, issue liquidation instructions or cash deposit instructions with respect to G J Steel because the Department indicated it may decide to "collapse" G Steel with G J Steel pursuant to 19 CFR 351.401(f). See *Partial Rescission*. Accordingly, the Department has addressed the issue of G Steel and G J Steel's affiliation and the proper treatment of these firms in the context of these preliminary results.

On July 7, 2009 U.S. Steel submitted comments and recommendations for the Department to consider in reaching its preliminary results.

Period of Review

The period of review is November 1, 2007, through October 31, 2008.

Scope of the Order

For purposes of the order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or

0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00,

7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under review is dispositive.

Comments on G Steel's and G J Steel's Request for Rescission of Review

In response to the request for withdrawal from the review by G Steel and G J Steel, Nucor claims the Department should treat the two companies' withdrawal as a refusal to cooperate with the Department's administrative proceeding and, accordingly, rely upon adverse inferences in determining the antidumping duty. *See* Nucor's Comments at 1. Nucor further argues the Department should not terminate the review with respect to G J Steel, but instead should determine a final margin for both companies based upon adverse inferences. *Id.* at 3. Nucor states the Department's regulations indicate that in certain instances, the Department will treat companies as a single entity, thereby "collapsing" them for purposes of calculating or assigning a dumping margin. *Id.* Nucor asserts collapsed companies must be: (1) affiliated within the meaning section 771(33) of the Tariff Act of 1930, as amended (the Act); (2) have production facilities for similar or identical products; and (3) present a significant potential for manipulation of price or production. Nucor claims all three of these criteria are satisfied.

First, Nucor claims G Steel and G J Steel are affiliated because G Steel owns more than five percent of the outstanding voting stock or shares of G J Steel, and that G Steel controls G J Steel. *Id.* Additionally, citing the section A response, Nucor claims G Steel treats G J Steel as a subsidiary and that G Steel's management was granted authority over the operations of G J Steel. Furthermore, Nucor cites to the preparation of consolidated financial statements, for the two companies. Nucor concludes that G Steel clearly controls G J Steel because it owns nearly half of G J Steel's stock, which is clearly more than the five percent threshold outlined in the statute. *Id.* at 4.

Second, Nucor contends that according to the section A response, G Steel and G J Steel are both "producers

of subject merchandise" and both companies have participated as respondents in prior reviews of the order. *Id.* Thus, Nucor avers the second factor, namely having production facilities for similar or identical products, has been fulfilled.

Third, Nucor argues that G Steel having ownership or control over nearly half of G J Steel's stock demonstrates a significant potential for manipulation of price and/or production. Nucor notes G Steel has stated that it assumed direct managerial control and authority over G J Steel. Nucor further asserts the two companies appear to be intertwined, as G Steel directly manages G J Steel and the companies sell each other's merchandise. Nucor argues that by requesting they be treated as a single entity for purposes of calculating an antidumping duty margin, G Steel and G J Steel have acknowledged that their operations are not sufficiently separate to be assigned separate rates. *Id.* at 4–5.

Nucor therefore contends the Department's collapsing requirements have been met. Nucor argues that if the companies are not treated as a single entity, there is a significant potential for the resulting differences in their antidumping margins to result in manipulation of price or production by shifting production and sales to the company with the lower rate. Thus, Nucor requests that the Department treat G Steel and G J Steel as a single entity. *See id.* at 5.

In its April 28, 2009, comments, U.S. Steel argues the Department should not rescind the instant review, either in whole or in part. *See* U.S. Steel's Comments at 2. Citing *Notice of Rescission of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 70 FR 76775, 76777 (December 28, 2005) U.S. Steel asserts it is the Department's well-established practice not to rescind a review at one party's request unless all the parties that requested a review have also withdrawn their requests. U.S. Steel further claims the Department definitely cannot rescind the review with respect to G Steel and, moreover, should continue the review for both G Steel and G J Steel because the two companies should be collapsed and treated as a single entity. *Id.* at 3.

With regard to collapsing G Steel and G J Steel, U.S. Steel claims the two companies' submission of a combined section A response demonstrates they intended to be treated as a single entity. *Id.* at 3–4. Furthermore, U.S. Steel argues that given the joint nature of G Steel and G J Steel's response, it would be impossible to calculate separate

dumping margins for each producer based on the information available. Thus, U.S. Steel continues, the Department has no choice but to treat G Steel and G J Steel as a single entity. *Id.*

Citing the Department's regulations at 19 CFR 351.401(f)(1), U.S. Steel asserts the Department will treat two or more producers as a single entity when three criteria are satisfied: (1) the producers are affiliated; (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for the manipulation of price or costs of production. *Id.* at 4. U.S. Steel argues that each of these criteria are met.

First, U.S. Steel argues that G Steel and G J Steel are affiliated producers within the statutory definition at section 771(33)(E) of the Act, which includes ("{a}ny person directly owning, controlling, or holding power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization" as "affiliated persons."). *Id.* at 5. U.S. Steel contends the section A response demonstrates that G J Steel has been a subsidiary of G Steel since June 2008, with G Steel and its affiliate owning 49.66 percent of G J Steel's common shares. *Id.*

Second, U.S. Steel argues the section A response shows "both companies produce only hot-rolled steel," including the subject merchandise. *See id.* Furthermore, U.S. Steel contends that G Steel and G J Steel use similar production processes to produce the subject merchandise. *Id.*

Third, with regard to the potential for manipulation, U.S. Steel states the Department's regulations at 19 CFR 351.401(f)(2) provide three considerations: (1) the level of common ownership between the two companies; (2) the extent to which managerial employees or board members of one company sit on the board of the other; and (3) whether the companies are intertwined. *See id.* U.S. Steel asserts that each of these considerations has been satisfied. First, citing the section A response, U.S. Steel contends G Steel and its affiliate own 49.66 percent of G J Steel's common shares and are the largest shareholders of G J Steel. Citing *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064 (July 16, 2006) and accompanying Issues and Decision Memorandum at Comment 18 (*Ball Bearings*), U.S. Steel asserts the

Department does not require a majority share ownership for collapsing; thus, G Steel's level of ownership is more than sufficient for collapsing purposes. Moreover, citing the section A response, U.S. Steel claims G J Steel was included in G Steel's financial statements because G Steel has had financial and operational management of G J Steel since June 2, 2008. *See* U.S. Steel's Comments at 6. Second, U.S. Steel avers G Steel and G J Steel share common board members. *Id.* Third, U.S. Steel insists the two companies have intertwined operations. *Id.* at 7. Citing *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From the Republic of Korea*, 66 FR 8348, 8352 (January 30, 2001) (*Rebar from Korea*), U.S. Steel also states that G Steel and G J Steel's financial statements "show significant trade accounts receivable and payable between the two companies." *Id.*

Finally, U.S. Steel claims G Steel's and G J Steel's U.S. sales of subject merchandise do not constitute large percentages of their home market sales of hot-rolled steel. *See id.* Citing *Rebar from Korea*, 66 FR at 8352, U.S. Steel states the Department has previously found this demonstrates that companies "potentially have the capacity to absorb the other's export market sales, in the event they were to shift export sales to the company with a lower margin."

In its July 7, 2009, comments, U.S. Steel restated its argument that G Steel and G J Steel should be collapsed based upon the companies' representations to the Department in this review. Moreover, U.S. Steel asserts G Steel and G J Steel have not rebutted U.S. Steel's April 28, 2009, comments demonstrating that G Steel and G J Steel should be collapsed. U.S. Steel argues the Department should base the dumping margin for G Steel and G J Steel on AFA because the companies failed to cooperate with the Department in this review. U.S. Steel argues the Department should use the petition rate of 20.30 percent because it was corroborated and used as total AFA for G Steel's predecessor, Siam Strip Mill Public Co., Ltd. (SSM), in the original investigation. U.S. Steel concludes this rate of 20.30 percent should be used so that G Steel and G J Steel do not benefit from their refusal to participate in this administrative review.

Department's Position

The Department has already determined that the review should be rescinded with respect to G J Steel. *See Partial Rescission*. However, pursuant to

the Department's statement in the *Partial Rescission* that it would examine whether G Steel and G J Steel should be treated as a collapsed entity as part of the ongoing administrative review, an analysis of the governing law and parties' arguments on this issue follows here.

The Department's determination concerning collapsing, or treating two or more producers as a single entity, is governed by the Department's regulations at 19 CFR 351.401(f)(1), which states the Department will treat two or more producers as a single entity when three criteria are satisfied: (1) the producers are affiliated; (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for the manipulation of price or costs of production. We preliminarily determine that each of these criteria is satisfied here.

With respect to the first criterion, namely affiliation, there is ample evidence that G Steel and G J Steel are affiliated. First, the companies' consolidated section A response states that G Steel and its affiliate own 49.66 percent of G J Steel's common shares. *See* Section A Response, Public Version at A-12 A-14. The antidumping statute provides numerous criteria that may indicate affiliation, including; "{a}ny person directly owning, controlling, or holding power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization." *See* section 771(33)(E) of the Act. Thus, the substantial ownership interest in G J Steel held by G Steel and its affiliate satisfies the statutory definition for affiliation. Moreover, G Steel's request was submitted jointly with G J Steel and both companies filed a single entry of appearance. *See* G Steel and G J Steel's Request for Administrative Review and Entry of Appearance, dated December 1, 2008. In this document G Steel asked the Department to "treat both companies as affiliated and, as affiliated producers, as a single entity entitled to a single antidumping duty rate as a result of this administrative review." *Id.* Moreover, although the Department sent two separate cover letters along with its questionnaire to G Steel and G J Steel, the two companies together submitted a joint response to the Department's section A questionnaire. *See* Section A Response, Public Version. As G Steel and G J Steel stated in their section A response, "G Steel and G J Steel respond to questions regarding U.S. sales

collectively." *Id.* at 2, n.2. In addition, the response stated, "G Steel now treats G J Steel as its subsidiary and has prepared consolidated financial statements that include the operations of G J Steel from June 2, 2008 forward." *Id.* at A-14. Furthermore, as U.S. Steel pointed out in its July 7, 2009 comments, G Steel stated that it has "management authority over the financial policies and operations" of G J Steel. *See* U.S. Steel's July 7, 2009 comments at 3, citing Section A Response, Public Version, at Exhibit A-12 (G Steel's Consolidated Financial Statements for the Six-month Period Ending June 30, 2008, at page 3) In short, the joint submissions by G Steel and G J Steel demonstrate that the companies consider themselves to be affiliated.

With respect to the second criterion, the record demonstrates that G Steel and G J Steel have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities. G Steel and G J Steel state that both companies "only produce and sell hot-rolled coil" and that both companies "manufacture products to the specifications commonly used" in both the U.S. and home markets. *See* Section A Response, Public Version, at A-40. Further, the flow charts and production processes shown in Exhibit A-15 of the consolidated section A response describe a similar production process used by both companies. *Id.* at Exhibit A-15. Finally, the companies' product brochures describe nearly identical processes and time lengths. *Id.* at Exhibit A-16 (G Steel's and G J Steel's product brochures, at page 1 of each brochure). Further, neither G Steel nor G J Steel would have to substantially retool its facilities in order to shift production of subject merchandise towards the company that has been assigned the lower margin. *See* Section A Response, Public Version at A-7 - A-8, A-41 and Exhibit A-15.

With respect to the third criterion, the significant potential for manipulations of prices or costs of production, the Department's regulations at 19 CFR 351.401(f)(2) sets forth three considerations: (1) the level of common ownership between the two companies; (2) the extent to which managerial employees or board members of one company sit on the board of the other; and (3) whether the companies are intertwined. The Department concurs with U.S. Steel's assertion that each of these considerations has been satisfied. First, concerning the level of common ownership, G Steel and its affiliate own

49.66 percent of G J Steel's common shares and are the largest shareholders of G J Steel. See Section A Response, Public Version at A-13 A-14. As evidenced in Ball Bearings, the Department's practice is that a majority share is not required for collapsing; thus, G Steel's level of ownership is sufficient for collapsing purposes. See Ball Bearings, Issues and Decision Memorandum at Comment 18. Moreover, the record demonstrates that G J Steel was included in G Steel's financial statements because G Steel has had financial and operational management of G J Steel since June 2, 2008. See Section A Response, Public Version at Exhibit A-12. Second, the Department concurs with U.S. Steel's assertion that G Steel and G J Steel share common board members. See U.S. Steel's New Factual Information; U.S. Steel's Comments, at Exhibit B. Third, there is substantial evidence that the companies are intertwined. U.S. Steel is correct in its assertion that G Steel and G J Steel's financial statements "show significant trade accounts receivable and payable between the two companies." See Section A Response, Public Version at Exhibit A-12 (G Steel's Consolidated Financial Statements for the year ending March 31, 2008 at 11-12). Additionally, G Steel's and G J Steel's U.S. sales of subject merchandise do not constitute large percentages of their home market sales of hot-rolled steel. See *id.* at Exhibit A-1. Thus, consistent with our findings in *Rebar from Korea*, this demonstrates that the two companies "potentially have the capacity to absorb the other's export market sales, in the event they were to shift export sales to the company with a lower margin." *Rebar from Korea*, 66 FR at 8352. Further, G Steel and G J Steel sell subject merchandise to the same affiliated customers, and these affiliated customers resell both of the companies' merchandise in the home market. See Section A Response, Public Version, at Exhibit A-1. In addition, G Steel and G J Steel sell each other's merchandise in the home market. See *id.* at A-6 ("{S}ome home market sales made by G Steel were sold by G J Steel, and vice versa.").

Therefore, pursuant to the Department's regulations and practice, the Department preliminarily determines that all criteria concerning the collapsing of G Steel and G J Steel have been satisfied. To treat G J Steel and G Steel as separate and independent entities would contradict the record evidence, including the companies'

representations to the Department that they are affiliated.

Successor-in-Interest Determination

The Department preliminarily determines that it is necessary to conduct a successor-in-interest analysis in the context of the instant review to examine the effect of G J Steel's name change. Specifically, during the period of review, Nakornthai changed its name to G J Steel. See Section A Response, Public Version at A-1. The Department notes that if the Department were to collapse G J Steel and G Steel without examining the name change, it would be possible for G J Steel to use Nakornthai's lower rate. Therefore, the Department must determine whether G J Steel is, in fact, the successor-in-interest to Nakornthai.

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. See, e.g., *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (January 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. See, e.g., *Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999); *Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Thus, if the evidence demonstrates that with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor. Successorship analyses can be carried out as part of an administrative review. See, e.g., *Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Individually Quick Frozen Raspberries from Chile*, 71 FR 45000, at fn.1 (August 8, 2006); unchanged in relevant part in final

results, *Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order in Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 70295 (December 11, 2007).

The Department preliminarily determines that G J Steel is the successor-in-interest to Nakornthai. First, with regard to management, it appears G J Steel's management is the same as Nakornthai's management. For example, Mr. Sirichai Sae-Kue was identified as Nakornthai's Vice-President - Commercial and Ms. Panee Tanaprateepkul as Nakornthai's Vice-President - Administration. See Section A Response, Public Version at Exhibit A-12 (Nakornthai Annual Report for 2007 at 86). Public records, specifically the *Business Week* profile for G J Steel, state that Mr. Sae-Kue now serves as the President of G J Steel and Ms. Panee Tanaprateepkul continues to serve as Vice President of Procurement, Human Resources & Admin & Logistic for G J Steel. See *Business Week* Profile for G J Steel Public Company Limited, available at <http://investing.businessweek.com/research/stocks/people/people.asp?ric=GJS.BK> (last accessed on July 28, 2009), which is incorporated on the record of this proceeding as a Memorandum to the File, dated July 29, 2009.

Second, with regard to production facilities, record evidence demonstrates Nakornthai used the same production facilities as G J Steel. For example, the Nakornthai Annual Report for 2007 shows Nakornthai's production facilities are located at Hermaraj Chonburi Industrial Estate in Chonburi. See Section A Response, Public Version at Exhibit A-12 at 76 (Nakornthai Annual Report for 2007). The last page of the product catalog for G J Steel identifies the same location identified above for the G J Steel factory. See Section A Response, Public Version at Exhibit A-16. Furthermore, the same exhibits show the head office of Nakornthai was in the same location as the head office of G J Steel, and that Nakornthai and G J Steel produced or produce the same product, namely hot-rolled coil.

Although the Department lacks information concerning G J Steel's supplier relationships and customer base, there is additional evidence to demonstrate that G J Steel is the successor-in-interest to Nakornthai. For example, the Nakornthai Annual Report for 2007 shows that Nakornthai owned 100 percent of the shares of NSM Steel Company Limited (NSM Cayman). NSM Cayman is identified as a subsidiary of Nakornthai which was incorporated for the purpose of issuing notes and

debentures and using the proceeds to make loans to Nakornthai. *See id.* at Exhibit A–12 at 108. The interim financial statements for G J Steel show that NSM Cayman is a subsidiary of G J Steel, and that G J Steel possesses the same relationship with NSM Cayman as did Nakornthai. *See* Section A Response, Public Version at Exhibit A–12, at 11 (interim financial statements for G J Steel for the three and six month periods ending June 30, 2008).

Moreover, the notes to the interim financial statements indicate that on June 5, 2008, the company changed its name from “Nakornthai Strip Mill Public Company” to “G J Steel Public Company Limited.” *See* Section A Response, Public Version, Exhibit A–12 at 38 n.18 (notes to the interim financial statements for the three-month and six-month periods ending June 30, 2008 (unaudited)). This company name change was registered with the Business Development Department of the Thailand Ministry of Commerce on June 5, 2008, and the Stock Exchange of Thailand was informed to “change the stock symbol from “NSM” to “GJS” in accordance with the change of the company’s name at the same date.” *Id.* at n.18 and n. 19 (notes to the interim financial statements for the three-month and six-month periods ending September 30, 2008 (unaudited)).

Use of Facts Otherwise Available

For the reasons discussed below and in the accompanying AFA memorandum, we preliminarily determine that the use of AFA is appropriate with respect to G Steel and G J Steel.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the

deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On March 12, 2009, G Steel and G J Steel notified the Department that it would not continue to participate in this administrative review and requested the removal of its business–proprietary information (BPI) from the administrative record. We granted this request and have removed all of its BPI from the administrative record. We also instructed counsel for Petitioner to destroy all copies of G Steel’s and G J Steel’s BPI data. *See* Memorandum to the File, dated April 8, 2009; *see also* Letters from the Department to G Steel and G J Steel, dated April 8, 2009; Letters from the Department to U.S. Steel and Nucor, dated April 9, 2009.

Because G Steel ended its participation in the instant administrative review, G Steel’s actions constitute a refusal to provide information necessary to conduct the Department’s antidumping analysis under sections 776(a)(2)(A) and (B) of the Act. Further, due to its withdrawal from this review, G Steel has not responded to sections B, C and D of the Department’s questionnaire. Thus, G Steel’s withdrawal significantly impedes conduct of the administrative review. *See* section 776(a)(2)(C) of the Act. Therefore, we preliminarily determine to base the margin for G Steel and, accordingly G J Steel, on facts otherwise available, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Further, absent any response on the record from G Steel, sections 782(d) and (e) of the Act do not apply.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, in reaching the applicable determination under this title the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994) at 870 (SAA). Further, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

G Steel and G J Steel’s request for withdrawal from the review and its failure to answer sections B, C and D of the Department’s questionnaire constitutes a refusal to participate in the administrative review. This demonstrates that G Steel and G J Steel failed to cooperate by not acting to the best of its ability to comply with the Department’s request for information. Therefore, pursuant to section 776(b) of the Act, the Department has preliminarily determined that in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where a respondent failed to respond to subsequent antidumping questionnaires).

C. Selection and Corroboration of Information Used as Facts Available

Section 776(b) of the Act provides that the Department may use as AFA information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. When selecting an AFA rate from among the possible sources of information, the Department’s practice has been to ensure the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

As total AFA, we have assigned G Steel and G J Steel the rate of 20.30 percent which is the highest alleged margin, as recalculated by the Department, for Thailand in the original antidumping petition. *See* Memorandum from Joseph A. Spetrini to Bernard T. Carreau, “Certain Hot–

Rolled Carbon Steel Flat Products from Thailand: Preliminary Determination of Sales at Less Than Fair Value--The Use of Facts Available for Siam Strip Mill Public Co. Ltd, and the Corroboration of Secondary Information," dated April 23, 2001 (Facts Available Memorandum). This rate was assigned as AFA to SSM, which was G Steel's predecessor in the investigation, and corroborated by the Department for its preliminary determination in the investigation. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 22199 (May 3, 2001) (*Thailand Preliminary Determination*).

We find this rate is sufficiently adverse to serve the purposes of facts available and is appropriate, considering that this AFA rate is the highest rate determined for any respondent in this proceeding. In choosing the appropriate balance between providing a respondent with an incentive to cooperate to the best of its ability and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

Section 776(c) of the Act provides that, to the extent practicable, the Department shall corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding constitutes secondary information. See *SAA at 870*; see also *Antifriction Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55577 (September 15, 2004). The word "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See *SAA at 870*; see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391,

57392 (November 6, 1996). To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

With respect to the reliability aspect of corroboration, the Department found the rate of 20.30 percent to be reliable in the investigation. See *Thailand Preliminary Determination*. There, the Department pointed out that the export prices in the petition were based on import values compiled by the U.S. Customs Service. See *Thailand Preliminary Determination*, 66 FR at 22202. These data were from publicly available sources (*i.e.*, official U.S. government statistics). The Department also compared the prices and expenses of export sales to the United States by Sahaviriya Steel Industries Public Co., Ltd. (Sahaviriya), a respondent in the investigation, to corroborate the information submitted in the petition. See *Facts Available Memorandum*. This memorandum was moved to this segment of the proceeding in the "Memorandum to the File, Transfer of Certain Documents from Past Segments of Proceeding in the Current Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from Thailand (A-549-917)", dated July 29, 2009 (Document Transfer Memorandum). Therefore, we found the U.S. price from the petition margin was sufficiently corroborated.

For the NV calculation, Petitioner relied upon constructed value, consisting of cost of manufacture (COM), selling, general, administrative expenses (SG&A), interest expenses, and profit. Petitioner based depreciation, SG&A, interest, and profit on Sahaviriya's publicly available financial statements. Therefore, because these data were based on publicly available financial statements, we found them to be sufficiently corroborated. Petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce hot rolled steel in the United States and Thailand using publicly available data. To corroborate these data, the Department compared them to the reported COM of Sahaviriya and its affiliates. Our analysis showed the petitioner's reported costs were reasonably close to the data submitted by Sahaviriya and its affiliates. Based on this analysis, we found that the COM data used in the antidumping petition have probative value. See *Facts Available Memorandum at 5 and 6*.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin

continues to have relevance. In the investigation, the Department determined that in the absence of verifiable data provided by the non-responding company, the petition information was the best approximation available to the Department of that company's pricing and selling behavior in the U.S. market. This information was relevant to the mandatory respondent which refused to participate in the investigation. See *Facts Available Memorandum*. No party contested the application of that rate in the investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 49622 (September 28, 2001).

To further corroborate the rate, the Department examined the final results of the most recent segment of this proceeding, which is the changed circumstances review. We note the rate of 20.30 percent is corroborated by margins calculated for individual transactions in the changed circumstances review. See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement in the Antidumping Duty Order*, 74 FR 22885 (May 15, 2009); and *Document Transfer Memorandum*. As certain of the calculations are based on proprietary information, see also "Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Corroboration of Total Adverse Facts Available for G Steel Public Company Limited (G Steel) and G J Steel Public Company Limited (formerly Nakornthai Strip Mill Public Company, Ltd.)" dated July 29, 2009, for further discussion.

Because the AFA rate of 20.30 percent is the highest rate assigned to any company in the history of this order, we find the rate is relevant for use in this administrative review and, therefore, it has probative value for use as AFA. As such, the Department finds this rate to be corroborated to the extent practicable, consistent with section 776(c) of Act. We have, therefore, selected the rate of 20.30 percent for G Steel and G J Steel as this rate is the highest margin assigned to any company in the history of this order. Thus, we consider the 20.30 percent rate to be sufficiently high so as to encourage participation in future segments of this proceeding.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the dumping margin for G Steel and G J Steel (formerly known as Nakornthai

Strip Mill Public Company Limited) is 20.30 percent for the period November 1, 2007, through October 31, 2008.

Disclosure and Public Comment

We will disclose pertinent memoranda concerning these preliminary results to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. See 19 CFR 351.310(c). If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. See 19 CFR 351.309(c). Interested parties may file rebuttal briefs, limited to issues raised in the case briefs, no later than 35 days after the publication of these preliminary results. See 19 CFR 351.309(d). Any hearing, if requested, will be held two days after the deadline for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in any written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are relying on total AFA to establish G Steel and G J Steel's dumping margin, we will instruct CBP to apply a dumping margin of 20.30 percent *ad valorem* to all entries of subject merchandise during the POR that was produced and/or exported by G Steel and G J Steel (formerly known as Nakornthai Strip Mill Public Company Limited). The Department intends to issue instructions to CBP 15 days after the publication of the final results of review.

Cash Deposit Requirements

If these preliminary results are adopted in the final results of review,

the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) the cash-deposit rate for G Steel and G J Steel (formerly known as Nakornthai Strip Mill Public Company Limited) will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous segment of the proceeding, the cash-deposit rate will continue to be the all-others rate established in the LTFV investigation which is 4.44 percent. See *Antidumping Duty Order*. These cash-deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. The preliminary results of administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 29, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-18733 Filed 8-4-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-834]

Purified Carboxymethylcellulose from Mexico: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-6312 and (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2009, the Department of Commerce ("Department") published the preliminary results of administrative review of purified carboxymethylcellulose from Mexico for the July 1, 2007, through June 30, 2008, period of review. See *Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 16359 (April 10, 2009). The final results for this administrative review are currently due no later than August 8, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to complete the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 120 day time period for the final results to 180 days.

The Department has determined it is not practicable to complete this review within the statutory time limit because of significant issues that require additional time to evaluate. These include questions involving entry dates and entered values, necessitating a post-preliminary supplemental questionnaire. Accordingly, the Department is extending the time limit for completion of the final results of this administrative review until no later than October 7, 2009, which is 180 days after the date on which the preliminary results of review were published.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 30, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-18727 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-831]

Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSSC) from Taiwan with respect to three companies. Only one respondent, Chia Far Industrial Factory Co., Ltd. (Chia Far), is participating in this review; the remaining two companies reported that they had no shipments of subject merchandise during the period of review (POR). The POR is July 1, 2007, through June 30, 2008.

We preliminarily determine that Chia Far made sales below normal value (NV). Moreover, we are preliminarily rescinding the review with respect to the companies that submitted no-shipment responses.

If the preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

DATES: *Effective Date:* August 5, 2009.

FOR FURTHER INFORMATION CONTACT:

Henry Almond, AD/CVD Operations, Office 2, Import Administration—Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0049.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** the antidumping duty order on SSSSC from Taiwan. See *Notice of Antidumping*

Duty Order; Stainless Steel Sheet and Strip in Coils From United Kingdom, Taiwan, and South Korea, 64 FR 40555 (July 27, 1999) (*SSSSC Order*). On July 11, 2008, the Department published in the **Federal Register** a notice of opportunity to request administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 39948 (July 11, 2008).

On July 31, 2008, the petitioners¹ submitted a timely request for the Department to conduct an administrative review of the sales of SSSSC made during the POR by the following 20 companies: Chain Chon Industrial Co., Ltd.; Chia Far; Chien Shing Stainless Co.; China Steel Corporation; Dah Shi Metal Industrial Co., Ltd.; Emerdex Group; Emerdex Stainless Flat-Rolled Products, Inc.; Emerdex Stainless Steel, Inc.; KNS Enterprise Co., Ltd.; Lih Chan Steel Co., Ltd.; Maytun International Corp.; PFP Taiwan Co., Ltd.; Shih Yuan Stainless Steel Enterprise Co., Ltd.; Ta Chen Stainless Pipe Co., Ltd. (Ta Chen); Tang Eng Iron Works; Waterson Corp.; Well Harvest Metal Co., Ltd.; Yieh Loong Enterprise Co., Ltd. (aka Chung Hung Steel Co., Ltd.); Yieh Mau Corp.; and Yieh United Steel Corporation (YUSCO), pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1).

In August 2008, the Department published a notice of initiation of administrative review covering each of these 20 companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308, 50309 (Aug. 26, 2008) (*Initiation Notice*).

In our initiation notice we indicated that we would select mandatory respondents for review based upon CBP entry data. See *Initiation Notice*, 73 FR at 50308. In September 2008, we released relevant CBP data to interested parties, and we received comments on the issue of respondent selection from the petitioners. Also in that month we received a statement from Ta Chen indicating that it had no shipments of subject merchandise to the United States during the POR.

Also in September 2008, the petitioners withdrew their request for administrative review with respect to the following 17 companies: Chain Chon Industrial Co., Ltd.; Chien Shing

Stainless Co.; China Steel Corporation; Dah Shi Metal Industrial Co., Ltd.; Emerdex Group; Emerdex Stainless Flat-Rolled Products, Inc.; Emerdex Stainless Steel, Inc.; KNS Enterprise Co., Ltd.; Lih Chan Steel Co., Ltd.; Maytun International Corp.; PFP Taiwan Co., Ltd.; Shih Yuan Stainless Steel Enterprise Co., Ltd.; Tang Eng Iron Works; Waterson Corp.; Well Harvest Metal Co., Ltd.; Yieh Loong Enterprise Co., Ltd. (aka Chung Hung Steel Co., Ltd.); and Yieh Mau Corp.

In October 2008, the Department issued the antidumping duty questionnaire to two remaining respondents, Chia Far and YUSCO, and we issued a letter to Ta Chen requesting additional information regarding its no-shipment statement. Ta Chen responded to our request in the same month by providing the requested information. Also in October 2008, YUSCO provided a statement indicating that it had no shipments of subject merchandise to the United States during the POR. For further discussion, see the “Partial Rescission of Review” section of this notice.

Subsequent to Ta Chen’s October response, the petitioners alleged that Ta Chen was engaged in middleman dumping of merchandise produced by Tung Mung Development Co. (Tung Mung), a Taiwanese producer of SSSSC which is excluded from the order. See *Notice of Correction to the Amended Final Determination in Accordance With Court Decision in the Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils From Taiwan*, 70 FR 17658 (April 7, 2005). In November 2008, Ta Chen denied the petitioners’ allegations, stating that Ta Chen International (TCI), a U.S. affiliate of Ta Chen, purchased and imported the SSSSC directly from Tung Mung and consequently that Ta Chen did not act as a middleman in these transactions. For further discussion, see the “Middleman Dumping” section of this notice.

During the period October through December 2008, we received Chia Far’s responses to sections A through D of the questionnaire.

In December 2008, we issued a supplemental questionnaire covering section D of the questionnaire (*i.e.*, the section covering cost of production (COP)). Chia Far responded to this supplemental questionnaire in January 2009.

In March 2009, we published a notice extending the time limit for completion of the preliminary results. See *Stainless Steel Sheet and Strip in Coils from Japan and Taiwan: Notice of Extension of Time Limit for Preliminary Results of*

¹ The petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, North American Stainless, United Auto Workers Local 3303, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

the 2007–2008 Administrative Reviews, 74 FR 10885 (Mar. 13, 2009).

In April 2009, we issued supplemental questionnaires covering sections A through C and a second supplemental questionnaire covering section D to Chia Far. We received Chia Far's responses to the supplemental questionnaires in April and May 2009.

In June and July 2009, the petitioners submitted additional comments requesting that the Department treat Ta Chen as a middleman for sales between Tung Mung and TCI.

Period of Review

The POR is July 1, 2007, through June 30, 2008.

Scope of the Order

The products covered by the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30,

7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

Also excluded from the scope of the order are certain specialty stainless steel products described below. Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The

material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as Arnokrome III.²

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as Gilphy 36.³

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless

² Arnokrome III is a trademark of the Arnold Engineering Company.

³ Gilphy 36 is a trademark of Imphy, S.A.

steel product is designated under the Unified Numbering System as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as Durphynox 17.⁴

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).⁵ This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as GIN4 Mo. The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is GIN5 steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer

processing, and is supplied as, for example, GIN6.⁶

Partial Rescission of Review

On September 25, 2008, the petitioners withdrew their request for administrative review with respect to the following 17 companies within the time limits set forth in 19 CFR 351.213(d)(1): (1) Chain Chon Industrial Co., Ltd.; (2) Chien Shing Stainless Co.; (3) China Steel Corporation; (4) Dah Shi Metal Industrial Co., Ltd.; (5) Emerdex Group; (6) Emerdex Stainless Flat-Rolled Products, Inc.; (7) Emerdex Stainless Steel, Inc.; (8) KNS Enterprise Co., Ltd.; (9) Lih Chan Steel Co., Ltd.; (10) Maytun International Corp.; (11) PFP Taiwan Co., Ltd.; (12) Shih Yuan Stainless Steel Enterprise Co., Ltd.; (13) Tang Eng Iron Works; (14) Waterson Corp.; (15) Well Harvest Metal Co., Ltd.; (16) Yieh Loong Enterprise Co., Ltd. (aka Chung Hung Steel Co., Ltd.); and (17) Yieh Mau Corp. Section 351.213(d)(1) of the Department's regulations requires that the Secretary rescind an administrative review if a party requesting a review withdraws the request within 90 days of the date of publication of the notice of initiation. Therefore, in accordance with 19 CFR 351.213(d)(1), because the request for administrative review with respect to the companies listed above was timely withdrawn, we are rescinding this review with regard to those companies.

Further, as noted in the "Background" section above, another respondent, YUSCO, certified to the Department that it had no shipments/entries of subject merchandise into the United States during the POR. The Department subsequently confirmed with CBP the no-shipment claim made by YUSCO. See the November 13, 2008, Memorandum to the File from Henry Almond, Analyst, entitled, "2007-2008 Administrative Review of Stainless Steel Sheet and Strips in Coils from Taiwan: Entry Information from U.S. Customs and Border Protection (CBP)." Because the evidence on the record indicates that YUSCO did not export subject merchandise to the United States during the POR, we preliminarily determine that it is appropriate to rescind the review for YUSCO, in accordance with 19 CFR 351.213(d)(3), and is consistent with the Department's practice. See, e.g., *Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Preliminary Rescission in Part of Antidumping Duty Administrative Review*, 73 FR 45393, 45395 (Aug. 5, 2008) (2006-2007

Preliminary Results), unchanged in *Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 73 FR 74704, 74706 (Dec. 9, 2008) (2006-2007 *Final Results*); and *Chia Far Indus. Factory Co., Ltd. v. United States*, 343 F. Supp 2d 1344, 1374 (2004). Finally, as noted above, Ta Chen also certified to the Department that it had no shipments/entries of subject merchandise into the United States during the POR. As with YUSCO, we confirmed with CBP that Ta Chen had no shipments/entries of subject merchandise during the POR. See the September 9, 2008, Memorandum to the File from Henry Almond, Analyst, entitled "Release of Additional Customs Entry Data from CBP." Because we preliminarily find that Ta Chen did not act as a middleman via imports by its U.S. affiliate, TCI, we are also preliminarily rescinding this review with respect to Ta Chen. For further discussion of this issue, see the "Middleman Dumping" section, below.

Middleman Dumping

In response to Ta Chen's certification that it had no shipments of subject merchandise during the POR, on September 18, 2008, the petitioners alleged that Ta Chen was engaged in middleman dumping by virtue of the fact that its U.S. affiliate, TCI, purchased and imported SSSSC from a Taiwanese producer/exporter during the POR. Specifically, the petitioners alleged that merchandise produced and exported by Tung Mung, a company whose exports of SSSSC are excluded from the antidumping duty order, and imported by TCI is subject to a middleman dumping enquiry because: (1) The Department previously found that Ta Chen acted as a middleman with respect to certain shipments from Tung Mung to the United States; and, (2) Ta Chen acts as a *de facto* middleman for Tung Mung sales to TCI by virtue of the fact that TCI is a wholly-owned subsidiary of Ta Chen.

On October 1, 2008, we requested that Ta Chen provide additional information about its role in the sales at issue, as well as explain why it believed the transactions at issue were not properly subject to a middleman dumping investigation. On October 7, 2008, Ta Chen responded to this questionnaire stating that Ta Chen played no role in the transactions. Specifically, Ta Chen stated that TCI negotiated directly with Tung Mung for these transactions and paid Tung Mung directly, and that Tung Mung acted as the exporter of record and TCI acted as the importer of record

⁴Durphynox 17 is a trademark of Imphy, S.A.

⁵This list of uses is illustrated and provided for descriptive purposes only.

⁶GIN4 Mo, GIN5 and GIN6 are the proprietary grades of Hitachi Metals America, Ltd.

for the sales in question. Further, Ta Chen argued that the Department's middleman dumping practice does not extend to direct sales from a foreign producer to an unaffiliated U.S. customer. Ta Chen further stated that in the less-than-fair-value (LTFV) investigation, the Department did not apply its middleman dumping methodology to this channel of direct sales from Tung Mung to TCI.

On October 24, 2008, June 5 and July 13, 2009, the petitioners submitted additional comments with respect to this issue. Ta Chen responded to the former comments on November 4, 2008, and did not respond to the latter. After considering the petitioners' allegation and their additional comments, as well as the information submitted by Ta Chen, we preliminarily find that Ta Chen did not act as a middleman because there is no evidence on the record demonstrating that Ta Chen was involved in the export transactions at issue. See the October 7 and November 4, 2008, Letters from Ta Chen regarding Middleman Dumping; and the January 14, 2008, Memorandum to the File from Henry Almond, Analyst, entitled, "2007–2008 Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan: Entry Documents from U.S. Customs and Border Protection." Rather, these transactions involved direct sales from Tung Mung, a company which is excluded from the order, to an unaffiliated purchaser in the United States, and thus these sales are properly excluded from the antidumping duty order on SSSSC from Taiwan. This finding is consistent with our determination in the LTFV investigation that Tung Mung's direct sales to the United States were not subject to a middleman dumping investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan* 64 FR 30592, 30621–30624 (June 8, 1999) (where the Department stated "although Tung Mung did have a small number of direct sales to TCI, we are not considering them to be subject to our middleman investigation.") We find the facts in this segment of the proceeding with respect to Tung Mung's direct sales to TCI to be identical to those present in the LTFV investigation. Thus, we find no basis to treat TCI as a middleman, solely by virtue of its affiliation with Ta Chen. Accordingly, we preliminarily determine it is appropriate to rescind the review for Ta Chen.

Affiliation

In the 2006–2007 administrative review, the most recently completed segment of this proceeding, we found Chia Far and Lucky Medsup Inc. (Lucky Medsup), one of Chia Far's U.S. reseller customers, to be affiliated under section 771(33) of the Act, which states that, for purposes of affiliation, "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over that person." The Department's regulations further provide that "[t]he Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." See 19 CFR 351.102(b)(3). This affiliation determination was based upon: (1) Chia Far's degree of involvement in sales between Lucky Medsup and its customers; (2) Chia Far knew the identity of Lucky Medsup's customers, and the customers were aware Chia Far was the supplier; (3) Lucky Medsup operated as a "go-through" that did not maintain any inventory or further manufacture products; and, (4) with the exception of one transaction involving non-subject merchandise, all of the products sold by Lucky Medsup during the POR were subject merchandise produced or exported by Chia Far. See *2006–2007 Preliminary Results*, 73 FR at 45395–45396, unchanged in *2006–2007 Final Results*.

The affiliation determination in the 2006–2007 administrative review is consistent with the Department's findings in prior administrative reviews of the antidumping duty order on SSSSC from Taiwan. See, e.g., *Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 73 FR 6932 (Feb. 6, 2008), and accompanying Issues and Decision Memorandum at Comment 3 (*2005–2006 Final Results*); *Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (Feb. 13, 2002), and accompanying Issues and Decision Memorandum at Comment 23 (upheld by the Court of International Trade (CIT) in *Chia Far Indus. Factory Co., Ltd. v. United States, et al.*, 343 F. Supp. 2d 1344, 1356–57 (CIT 2004)). See also the July 29, 2009, Memorandum to the File from Henry Almond, Analyst, entitled, "Placing Information Regarding the Principal-Agent Relationship between Lucky Medsup Inc. and Chia Far

Industrial Factory Co., Ltd. on the Record of the 2007–2008 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan."

In the present review, Lucky Medsup continues to act as a "go-through" without maintaining inventory, and Chia Far supplied all of the subject merchandise sold by Lucky Medsup during the POR. Further, Chia Far has submitted no evidence on the record to demonstrate that Chia Far is less involved in the transactions between Lucky Medsup and its customers as found in prior reviews. Therefore, we continue to find for purposes of these preliminary results that Chia Far is affiliated with Lucky Medsup because Chia Far is in a position to exercise restraint or direction over Lucky Medsup and has the potential to have an impact on Lucky Medsup's decisions regarding sales and pricing.

Identifying Home Market Sales

Section 773(a)(1)(B) of the Act defines NV as the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country (home market), in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade (LOT) as the export price (EP) or constructed export price (CEP). In implementing this provision, the Court of International Trade has found that sales should be reported as home market sales if the producer "knew or should have known that the merchandise {it sold} was for home consumption based upon the particular facts and circumstances surrounding the sales." See *Tung Mung Dev. Co v. United States*, 25 CIT 752, 783 (2001) (quoting *INA Walzlager Schaeffler KG v. United States*, 957 F. Supp. 251 (CIT 1997)). Where a respondent has no knowledge as to the destination of subject merchandise, except that it is for export, the Department will classify such sales as export sales and exclude them from the home market sales database. See *2006–2007 Preliminary Results*, 73 FR at 45396, unchanged in *2006–2007 Final Results*, and *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea*, 58 FR 37176, 37182–37183 (July 9, 1993).

In its November 14, 2008, questionnaire response, Chia Far stated that it shipped some of the SSSSC it

sold to home market customers during the POR to a container yard or it placed the SSSSC in an ocean shipping container at the home market customer's request. The Department has preliminarily determined that, based on the fact that these sales were sent to a container yard or placed in a container by Chia Far at the request of the home market customer, Chia Far should have known that the SSSSC in question was not for consumption in the home market. Therefore, consistent with this determination, the Department has preliminarily excluded these sales from Chia Far's home market sales database. This treatment is consistent with our practice in prior administrative reviews of this order. *See, e.g., 2006–2007 Preliminary Results*, 73 FR at 45396, unchanged in *2006–2007 Final Results*.

Comparisons to Normal Value

In order to determine whether Chia Far sold SSSSC to the United States at prices less than NV, the Department compared the EP and CEP of individual U.S. sales to the monthly weighted-average NV of sales of the foreign like product made in the ordinary course of trade. *See* section 777A(d)(2) of the Act; *see also* section 773(a)(1)(B)(i) of the Act. Section 771(16) of the Act defines foreign like product as merchandise that is identical or similar to subject merchandise and produced by the same person and in the same country as the subject merchandise. Thus, we considered all products covered by the scope of the order that were produced by the same person and in the same country as the subject merchandise, and sold by Chia Far in the comparison market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to SSSSC sold in the United States.

During the POR, Chia Far sold subject merchandise and foreign like product that it made from hot- and cold-rolled stainless steel coils (products covered by the scope of the order) purchased from unaffiliated parties. Chia Far further processed the hot- and cold-rolled stainless steel coils by performing one or more of the following procedures: cold-rolling, bright annealing, surface finishing/shaping, and slitting. We did not consider Chia Far to be the producer of the merchandise under review if it performed only insignificant processing on the coils (*e.g.*, annealing, slitting, surface finishing). *See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 69 FR 74495 (Dec. 14, 2004), and accompanying

Issues and Decision Memorandum at Comment 4 (listing painting, slitting, finishing, pickling, oiling, and annealing as minor processing for flat-rolled products). Furthermore, we did not consider Chia Far to be the producer of the cold-rolled products that it sold if it was not the first party to cold-roll the coils. The cold-rolling process changes the surface quality and mechanical properties of the product and produces useful combinations of hardness, strength, stiffness, and ductility. Stainless steel cold-rolled coils are distinguished from hot-rolled coils by their reduced thickness, tighter tolerances, better surface quality, and increased hardness which are achieved through cold-rolling. Chia Far's subsequent cold-rolling of the cold-rolled coils that it purchased may have modified these characteristics to suit the needs of particular customers; however, it did not impart these defining characteristics to the finished coils. Thus, we considered the original party that cold-rolled the product to be its producer.

Product Comparisons

The Department compared U.S. sales to sales made in the comparison market within the contemporaneous window period, which extends from three months prior to the month in which the first U.S. sale was made until two months after the month in which the last U.S. sale was made. *See* 19 CFR 351.414(e)(2). Where there were no sales of identical merchandise made in the comparison market in the ordinary course of trade, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by Chia Far in the following order of importance: grade, hot- or cold-rolled, gauge, surface finish, metallic coating, non-metallic coating, width, temper, and edge.

Export Price and Constructed Export Price

The Department based the price of Chia Far's U.S. sales of subject merchandise on EP or CEP, as appropriate. Specifically, when Chia Far sold subject merchandise to unaffiliated purchasers in the United States prior to importation and CEP was not otherwise warranted based on the facts of the record, we based the price of the sale on EP, in accordance with section 772(a) of the Act. When Chia Far sold subject merchandise to unaffiliated purchasers

in the United States through its U.S. affiliate, Lucky Medsup, we based the price of the sale on CEP, in accordance with section 772(b) of the Act.

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, container handling charges, harbor maintenance fees, and certificate-of-origin fees, in accordance with section 772(c)(2)(A) of the Act.

We based CEP on packed prices sold to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight expenses, foreign brokerage and handling expenses, container handling expenses, foreign harbor construction expenses, international freight expenses, marine insurance expenses, U.S. duty expenses, U.S. brokerage and handling expenses, other U.S. transportation expenses, and harbor maintenance fees, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted from CEP those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, bank fees, and warranties) and indirect selling expenses.

In addition, we deducted from the CEP starting price an amount for CEP profit (*i.e.*, profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) of the Act), in accordance with sections 772(d)(3) and 772(f) of the Act. We computed profit by deducting from the total revenue realized on sales in both the U.S. and home markets all expenses associated with those sales. We then allocated profit to the expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of Chia Far's home market sales of the foreign like product is more than five percent of the aggregate volume of its U.S. sales of subject merchandise, we

based NV on sales of the foreign like product in the respondent's home market.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.* See also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁷ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1313–14 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in

section 773(a)(7)(B) of the Act. See *Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from Chia Far regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Chia Far for each channel of distribution. Chia Far reported that it made EP sales in the U.S. market to distributors, as well as CEP sales to its affiliate, Lucky Medsup. Chia Far reported identical selling activities in selling to its unaffiliated U.S. customers as it did in selling to Lucky Medsup. We examined the selling activities performed for both channels and found that Chia Far performed the following types of selling activities equally in selling to its unaffiliated U.S. customers and to Lucky Medsup: (1) Price negotiation and communication with the customer (*i.e.*, either its unaffiliated customers for EP sales, or Lucky Medsup for its CEP sales); (2) arranging for freight and the provision of customs clearance/brokerage services (where necessary); and, (3) provision of general technical advice (where necessary) and quality assurance-related activities, including warranty services. These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; and (3) inventory maintenance and warehousing; and, (4) warranty and technical support. Accordingly, we find that Chia Far performed sales and marketing, freight and delivery services, and warranty and technical support services for U.S. sales. Because the level of Chia Far's selling activities did not vary by distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Chia Far reported that it made sales to distributors and end users. We examined the selling activities performed for home market sales and found that Chia Far performed the following types of selling activities equally for sales to distributors and end users: (1) Price negotiation and communication with the customer; (2) arranging for freight (where necessary); (3) provision of general technical advice (where necessary) and quality assurance-related activities, including providing warranty services and rebates; and, (4) post-sale warehousing/processing on request. Accordingly, based on the selling functions analysis described above, we find that Chia Far performed sales and marketing, freight and delivery services, warranty and technical support services, and

inventory maintenance and warehousing for home market sales. Consequently, we preliminarily determine that there is one LOT in the home market for Chia Far.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Specifically, although Chia Far performed occasional warehousing and post-sale processing functions in the home market that it did not perform on sales to the United States, we do not find these differences to be material selling function distinctions sufficient to warrant a separate LOT for purposes of these preliminary results. Thus, we determine that the NV LOT is the same as the U.S. LOT.

Regarding the CEP-offset provision, as described above, it is appropriate only if the NV LOT is at more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Because we find that no difference in LOTs exists, we do not find that a CEP offset is warranted.

C. Cost of Production Analysis

In the 2005–2006 administrative review, the most recently completed segment of this proceeding as of the date of initiation of this review, the Department determined that Chia Far sold the foreign like product at prices below the cost of producing the product and excluded such sales from the calculation of NV. See *2005–2006 Final*, 73 FR at 6935. As a result, the Department initiated an investigation to determine whether Chia Far made home market sales during the POR at prices below their COPs. See section 773(b)(2)(A)(ii) of the Act.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each foreign like product sold by Chia Far during the POR, we calculated a weighted-average COP based on the sum of Chia Far's materials and fabrication costs, G&A expenses, and financial expenses.

2. Test of Comparison-Market Sales Prices

In order to determine whether sales were made at prices below the COP on a product-specific basis, we compared Chia Far's weighted-average COP to the prices of its home market sales of foreign like product, as required under section 773(b) of the Act. In accordance with sections 773(b)(1)(A) and (B) of the Act, in determining whether to

⁷ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and, (2) at prices which permitted the recovery of all costs within a reasonable period of time. We compared the COP to home market sales prices, less any applicable movement charges and direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Chia Far's sales of a given product were made at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Chia Far's sales of a given product were made at prices less than the COP during the POR, we determined such sales to have been made in "substantial quantities" within an extended period of time (*i.e.*, one year) pursuant to sections 773(b)(2)(B) and (C) of the Act. Based on our comparison of POR average costs to reported prices, we also determined, in accordance with section 773(b)(2)(D) of the Act, that these sales were not made at prices which would permit recovery of all costs within a reasonable period of time. As a result, we disregarded the below-cost sales of that product.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV for Chia Far on prices to unaffiliated customers in the home market. We made deductions from the starting price, where appropriate, for billing adjustments and rebates. We also made deductions from the starting price for foreign inland freight expenses under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c) for differences in credit expenses, bank fees, and warranties.

We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on

the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the respondent for the period July 1, 2007, through June 30, 2008:

Manufacturer/exporter	Percent margin
Chia Far Industrial Factory Co., Ltd	4.30

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d)(1). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. See 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and, (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of

publication of the final results of this review.

For Chia Far, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, less than 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all others rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Chia Far will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case no cash deposit will be required; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate

published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.61 percent, the all others rate made effective by the LTFV investigation. See *SSSSC Order*, 64 FR at 40557. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 30, 2009.

Ronald K. Lorentzen,
Acting Assistant Secretary for Import Administration.

[FR Doc. E9-18722 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

C-489-502

Welded Carbon Steel Standard Pipe and Tube from Turkey: Intent to Rescind Countervailing Duty Administrative Review, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 5, 2009.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482-4793

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2009, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on welded carbon steel pipe and tube from Turkey. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 9077 (March 2, 2009). On March 31, 2009, we received from Wheatland Tube Company, a domestic producer of subject merchandise, a request that the Department conduct an administrative review of the Yucel Boru Group, Cayirova Boru Sanayi ve Ticaret A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., and Yucel Boru ve Profil Endustrisi A.S. (collectively, Yucel).¹

On April 27, 2009, the Department published the notice of initiation of the administrative review of the CVD order for the period January 1, 2008, through December 31, 2008, which covered Yucel. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042, 19044 (April 27, 2009).

On June 15, 2009, Yucel notified the Department that it had no sales, shipments, or entries, directly or indirectly, of subject merchandise to the United States during the period of review (POR).²

Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

¹ Wheatland Tube Company also requested a review of the Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A.S., Tosyali dis Ticaret A.S., and Toscelik Profil ve Sac Endustrisi A.S. See Letter from King & Spalding on behalf of Wheatland Tube Company to the Department regarding "Request for Administrative Review," dated March 31, 2009. A copy of this public document is available on the public record in the Department's Central Records Unit (CRU), room 1117 of the main Commerce building.

² This document is available on the public record in the CRU.

Intent to Rescind the 2008 Administrative Review, in Part

Yucel submitted a letter to the Department on June 15, 2009, certifying that it had no sales, shipments, or entries, directly or indirectly, of subject merchandise to the United States during the POR. The petitioner did not comment on Yucel's claim of no sales, shipments, or entries.

On June 16, 2009, we conducted an internal customs data query. We also issued a "no shipments inquiry" message to U.S. Customs and Border Protection (CBP), which posted the message on June 19, 2009.³ The customs data query indicated that Yucel had no sales, shipments, or entries of subject merchandise to the United States during the POR. We did not receive any information from CBP contrary to Yucel's claim of no sales, shipments, or entries of subject merchandise to the United States during the POR. See Memorandum to the File through Melissa Skinner, Director, AD/CVD Operations, Office 3, titled "Customs Data Query," (July 7, 2009).

Based on our analysis of the shipment data, we preliminarily determine that Yucel did not ship subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,⁴ we preliminarily determine to rescind the review for Yucel. We will continue this administrative review with respect to the Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A.S., Tosyali dis Ticaret A.S., and Toscelik Profil ve Sac Endustrisi A.S.

Public Comment

The Department is setting aside a period for interested parties to raise issues regarding the preliminary determination to rescind the administrative review for Yucel. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period for public comment is intended to provide the Department with ample opportunity to consider all issues prior to the

³ thnsp: See Message number 9170203, available at <http://addcvd.cbp.gov>.

⁴ See, e.g., *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Rescission, in Part, of Antidumping Duty Administrative Review*, 74 FR 7394 (February 17, 2009).

issuance of the notice to rescind the administrative review in part.

We are issuing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: July 28, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-18598 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-AY12

Mid-Atlantic Fishery Management Council; Spiny Dogfish Amendment 3 Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of public scoping meetings; requests for comments.

SUMMARY: The New England and Mid-Atlantic Fishery Management Councils (Councils) announce their intention to prepare, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures to address several issues regarding the Spiny Dogfish Fishery Management Plan.

This notice announces a public process for determining the scope of issues to be addressed, and for identifying the significant issues related to amending the plan. This notice is to alert the interested public of the scoping process, the development of the Draft EIS, and to provide for public participation in that process.

DATES: Written comments must be received on or before 5 p.m., EST, on September 4, 2009. Four public scoping meetings will be held during this comment period. See Supplementary Information for dates, times, and locations.

ADDRESSES: Written comments may be sent by any of the following methods:

- E-mail to the following address: dogfish3@noaa.gov. Please note on your correspondence and in the subject line of e-mail comments the following

identifier: "Spiny Dogfish Amendment 3 Scoping Comments.";

- Mail or hand deliver to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904-6790. Mark the outside of the envelope "Spiny Dogfish Amendment 3 Scoping Comments"; or
- Fax to (302) 674-5399.

The scoping document may also be obtained from the Council office at the previously provided address, or by request to the Council by telephone (302) 674-2331, or via the Internet at <http://www.mafmc.org/mid-atlantic/comments/comments.htm>.

Comments may also be provided verbally at any of the three public scoping meetings. See Supplementary Information for dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New St., Dover, DE 19904-6790, (telephone 302-674-2331).

SUPPLEMENTARY INFORMATION:

Meetings

Four scoping meetings to facilitate public comment will be held on the following dates and locations:

1. August 10, 2009, 7:00 p.m., Virginia Marine Fisheries Commission, 2600 Building Meeting Room, 2600 Washington Ave., Newport News, VA 23607;
2. August 11, 2009, 7:00 p.m., Ocean County Administration Building, Public Hearing Room #119, 101 Hooper Ave, Toms River, NJ 08754;
3. August 12, 2009, 6:30 p.m., New Hampshire Urban Forestry Center, 45 Elwyn Rd, Portsmouth, NH 03801;
4. August 13, 2009, 7:00 p.m., Radisson Plymouth, 180 Water Street, Plymouth, MA 02360.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan (302-674-2331 ext 18) at least 5 days prior to the meeting date.

Issues Identified for Discussion Under this Amendment

(1) Research-Set-Aside (RSA) provision: Currently there is no option for allocating a portion of the spiny dogfish quota to support research projects. The Councils are considering adding an RSA provision to the FMP.

(2) Commercial Quota Allocation Alternatives: Currently, the commercial quota for spiny dogfish is allocated seasonally into two periods in the fishing year. Period 1 (May 1-Oct 31) is allocated 57.9 percent of the quota and Period 2 (Nov 1-Apr 30) is allocated 42.1 percent of the quota. The Councils are considering alternative allocation (i.e., geographic) schemes for the Federal quota.

(3) Specifying the spiny dogfish quota and/or trip limits by sex: The Councils are considering modifications to the FMP that would allow for sex-specific annual specification of spiny dogfish commercial quota and/or trip limits.

(4) Limited Access Spiny Dogfish Permit: Federal spiny dogfish permits are currently available to all vessels. The Councils are considering modifying the Federal permit to make it a limited access permit. It is possible that an incidental catch permit would also be established that would be open access.

(5) Recreational Spiny Dogfish Fishery: To the extent that recreationally caught spiny dogfish are retained, that component of the overall fishery is not acknowledged in the FMP. The Councils are considering adding management measures for the recreational fishery to the FMP.

Following the scoping process, the Councils may develop additional approaches and alternatives (including No Action) to address these issues, consistent with the Magnuson-Stevens Fishery Conservation and Management Act. The above issues under consideration are described in greater detail in the scoping document itself; copies may be obtained from the Council (see **ADDRESSES**) or via the Internet at <http://www.mafmc.org/comments/comments.htm>.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 30, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9-18751 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XP99

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS will hold a 3-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in September 2009. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting will be held from 1 p.m. to 5 p.m. on Wednesday, September 9, 2009, from 8 a.m. to 5 p.m. on Thursday, September 10, 2009, and from 8 a.m. to 2:30 p.m. on Friday, September 11, 2009.

ADDRESSES: The meeting will be held in Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Othel Freeman or Margo Schulze-Haugen at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104-297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks. The AP has previously consulted with NMFS on: Amendment 1 to the Billfish FMP (April 1999), the HMS FMP (April 1999), Amendment 1 to the HMS FMP (December 2003), the Consolidated HMS FMP (October 2006), and Amendments 1, 2, and 3 to the Consolidated HMS FMP (April and October 2008, and February 2009). At the September 2009 AP meeting, NMFS plans to hold public hearings to discuss Amendments 3 and 4 to the 2006 Consolidated HMS FMP for small coastal sharks, and Caribbean fishery management measures, respectively, and for Atlantic bluefin tuna and swordfish based on an Advanced Notice of Proposed Rulemaking that published on June 1, 2009 (74 FR 26174). Other potential items for discussion include annual quota specifications for bluefin tuna, swordfish, and sharks, as well as the 2010 meeting of the International Commission for the Conservation of Atlantic Tunas.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Othel Freeman at (301) 713-2347, at least 7 days prior to the meeting.

Dated: July 30, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E9-18749 Filed 8-4-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Administration and Audit Services (OMB Control Number 0704-0250)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through July 31, 2009. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by October 5, 2009.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704-0250, 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 OMB Control Number 0704-0250 in the subject line of the message.

○ *Fax:* 703-602-7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, 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: Mr. Mark Gomersall, 703-602-0302. The information collection requirements addressed in this notice are available on the World Wide Web at: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>. Paper copies are available from Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 242, Contract Administration and Audit Services, and related clauses in DFARS Part 252; DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions; OMB Control Number 0704-0250.

Needs and Uses: DoD needs this information to perform contract administration functions. DoD uses the information as follows:

a. Contract administration offices use the information required by DFARS Subpart 242.11 to determine contractor progress and to identify any factors that may delay contract performance.

b. Administrative contracting officers use the information required by DFARS Subpart 242.73 to determine the allowability of insurance/pension costs under Government contracts.

c. Contract administration offices and transportation officers use the information required by DFARS 252.242-7003, and submitted on DD Form 1659, in providing Government bills of lading to contractors.

d. Contracting officers use the information required by DFARS 252.242-7004 to determine if contractor material management and accounting systems conform to established DoD standards.

Affected Public: Businesses or other for-profit and not-for-profit institutions.
Annual Burden Hours: 275,960.
Number of Respondents: 15,049.

Responses per Respondent:
Approximately 7.

Annual Responses: 105,898.
Average Burden per Response:
Approximately 2.6 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements relating to DFARS Part 242, Contract Administration and Audit Services.

a. DFARS Subpart 242.11 requires DoD contract administration personnel to conduct production reviews to determine contractor progress and to identify any factors that may delay contract performance. Contractors must provide information needed to support the reviews and must submit production progress reports.

b. DFARS Subpart 242.73 contains requirements for Government conduct of contractor insurance/pension reviews. Contractors must provide documentation needed to support the reviews.

c. DFARS 252.242–7003 requires contractors to request Government bills of lading by submitting DD Form 1659 to the transportation officer or the contract administration office.

d. DFARS 252.242–7004 requires contractors to establish, maintain, and disclose material management and accounting systems.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E9–18756 Filed 8–4–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice Is Given of the Names of Members of a Performance Review Board for the Department of the Air Force

AGENCY: Department of the Air Force.

ACTION: Notice.

DATES: *Effective Date:* November 16, 2009.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The board(s) shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the 2009 Performance Review Board for the U.S. Air Force are:

1. Board President—Gen Roger A. Brady, USAFE/Air Component, Commander/Director Joint Air Competency Center.
2. Lt Gen Loren M. Reno, Commander, Deputy Chief of Staff, Logistics, Installations and Mission Support, Headquarters, United States Air Force.
3. Mr. Tim A. Beyland, Assistant Deputy Chief of Staff for Manpower and Personnel.
4. Dr. Steven F Butler, Air Force Material Command, Executive Director.
5. Mr. Theodore Williams, Auditor General of the United States Air Force.
6. Ms. Tawanda R. Rooney, Director, Intelligence Systems Support Office.
7. Mr. Timothy K. Bridges, Director, Communications, Installations and Mission Support.
8. Ms. Mary Chris Puckett, Director Installations and Logistics.
9. Mr. Joseph McDade, Army.
10. Mr. Charlie E. Williams, Jr., Director, Defense Contract Management Agency.
11. Mr. Ray Longerbeam (Naval Program Support Activity).

Additionally, all career status Air Force Tier 3 SES members not included in the above list are eligible to serve on the 2009 Performance Review Board and are hereby nominated for inclusion on an ad hoc basis in the event of absence(s). In addition Mr. Bobby W. Smart, Director, Policy Planning and Resources, United States Air Force and Ms. Audrey Y. Davis, Deputy Assistant Secretary, Financial Operations, United States Air Force are nominated for inclusion on an ad hoc basis for the Tier 2 Performance Review Board in the event of absence(s).

FOR FURTHER INFORMATION CONTACT:

Please direct any written comments or requests for information to Ms. Pereuna Johnson, Chief, Sustainment Division, Senior Executive Management, AF/DPSS, 1040 Air Force Pentagon, Washington DC 20330–1040 (PH: 703–695–7677; or via e-mail at pereuna.johnson@pentagon.af.mil)

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–18673 Filed 8–4–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement

Charter Schools Program Grants to Non-State Educational Agencies for Planning, Program Design, and Implementation and for Dissemination

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.282B and 84.282C.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2009; correction.

SUMMARY: The Department of Education is correcting the notice inviting applications for new awards for FY 2009 for Charter Schools Program Grants to Non-State Educational Agencies for Planning, Program Design, and Implementation and for Dissemination that was published in the **Federal Register** on July 27, 2009 (74 FR 37020).

Correction: (1) On page 37020, in the third column, under *Priority*, fourth line; and (2) on page 37021, in the first column, first line, the date and page reference for the **Federal Register** are corrected to read “November 21, 2008 (73 FR 70627).”

FOR FURTHER INFORMATION CONTACT: Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W255, Washington, DC 20202–5970. *Telephone:* (202) 205–3525.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under this section.

Electronic Access to this Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: July 30, 2009.

James H. Shelton III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E9-18609 Filed 8-4-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the Basic Energy Sciences Advisory Committee

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and section 102-3.65, Title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been renewed for a 2-year period.

The Committee will provide advice to the Department of Energy's Office of Science on the basic energy sciences programs. The Secretary of Energy has determined that renewal of the Basic Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

For Further Information Contact: Ms. Rachel Samuel at (202) 586-3279.

Issued in Washington, DC, on July 31, 2009.

Eric Nicoll,

Advisory Committee Management Officer.

[FR Doc. E9-18680 Filed 8-4-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2106-059]

Pacific Gas and Electric Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

July 29, 2009.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2106-059.

c. *Date Filed:* July 16, 2009.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* McCloud-Pit Hydroelectric Project.

f. *Location:* The existing project is located on the McCloud and Pit Rivers in Shasta County, California. The project occupies lands of the United States, managed by the United States Department of Agriculture—Forest Service and the United States Department of Interior—Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(f).

h. *Applicant Contact:* Randal S. Livingston, Vice President—Power Generation, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code N11E, San Francisco, CA 94177-0001; Telephone (415) 973-7000.

i. *FERC Contact:* Emily Carter at (202) 502-6512 or emily.carter@ferc.gov.

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The existing McCloud-Pit Project consists of three existing developments (James B. Black, Pit 6, and Pit 7), which collectively include two storage reservoirs (McCloud and Iron Canyon), two regulating reservoirs (Pit 6 and Pit 7), one afterbay (Pit 7), two tunnels, three powerhouses (James B. Black, Pit 6, and Pit 7), and associated equipment and transmission facilities. The project has an installed capacity of 368-megawatts (MW), produces an average annual generation of 1,542 gigawatt-hours (GWh), and occupies 3,707.6 acres of land. Approximately 1,651.4 of these acres are federally owned, with 1,621.9 managed by the Shasta-Trinity National Forest and 29.5 managed by the U.S. Bureau of Land Management. In addition to the existing facilities, PG&E is proposing to construct two generation additions consisting of powerhouses at the base of McCloud dam (5-8 MW) and at the base of Pit 7 Afterbay dam (10 MW).

The project involves the transfer of water from the McCloud River basin to the Lower Pit River basin via a tunnel from the McCloud reservoir to Iron Canyon reservoir. Iron Canyon reservoir is on Iron Canyon Creek, a tributary of the Pit River. Water flows from Iron Canyon reservoir via a tunnel to the James B. Black powerhouse. Although the project diverts water from the McCloud River basin to the Lower Pit

River basin, both basins drain to Shasta Lake.

James B. Black Development

McCloud Dam and McCloud Reservoir

McCloud dam is a 241-foot-high, 630-foot-long earth and rock filled dam located on the McCloud River and impounds McCloud reservoir. The McCloud reservoir has a surface area of 520 acres and a maximum storage capacity of approximately 35,234 acre-feet (af). The spillway [elevation 2,696.0 feet National Geodetic Vertical Datum (NGVD)] is on the south side of the dam. The reservoir has a normal maximum water surface elevation of 2,680 feet. The dam is equipped with three radial gates measuring 27 feet by 24.5 feet, discharging into a spillway that returns spillage flows to the McCloud River below the dam. The dam also has a 12-foot diameter diversion/outlet tunnel that runs under the dam to supply a 24-inch Howell-Bunger valve for releasing instream flows to the McCloud River, as well as an 84-inch diameter butterfly valve for emergency use to control reservoir levels. Controls for the diversion/outlet tunnel are located at the intake within McCloud reservoir.

McCloud Tunnel

A 7.2-mile-long tunnel and a 563-foot-long pipeline at Hawkins Creek crossing hydraulically link McCloud reservoir and Iron Canyon reservoir. An intake tower within McCloud reservoir collects water for the McCloud tunnel, which is approximately 17 feet in diameter and heads easterly to Iron Canyon reservoir. The differential in water surface elevations between the two reservoirs controls the amount of water drafted through the tunnel.

Iron Canyon Dam and Reservoir

An earth-filled dam 214 feet high and 1,130 feet long impounds Iron Canyon reservoir. The reservoir has a maximum storage capacity of 24,241 af with an approximate 500-acre surface area. The dam has a slide gate leading to a 48-inch diameter pipe for instream flow releases to Iron Canyon Creek. Normal maximum water surface elevation within the reservoir is 2,664 feet. When the water surface of Iron Canyon reservoir is lowered, water flows through the McCloud tunnel from McCloud reservoir to Iron Canyon reservoir.

Iron Canyon Tunnel and Penstock

Iron Canyon reservoir is connected to James B. Black powerhouse via the 2.9-mile long, 18-foot diameter Iron Canyon Tunnel, an associated 1,194-foot-long, 11.5-foot diameter pipeline at the Willow Spring Creek crossing, and a

5,467-foot-long, 11.5-foot diameter steel penstock. The penstock bifurcates before James B. Black powerhouse to deliver water flow to the two turbine generator units. The tunnel and penstock have a total flow capacity of 2,000 cfs.

James B. Black Powerhouse

James B. Black powerhouse is located on the northwest bank of the Pit River, approximately 0.5 miles upstream of the non-Project Pit 5 powerhouse (FERC Project No. 233). The powerhouse is a three-level, reinforced concrete structure containing two vertical shaft impulse turbines rated at 104,000 hp each. They operate at a normal maximum gross head of 1,226 feet. Unit 1 was commissioned in 1966 and Unit 2 in 1965. Two vertical axis outdoor generators, Unit 1 rated at 94.8 megavolt-ampere (MVA) and Unit 2 rated at 92.6 MVA, are connected to a three phase, 86 MVA transformer bank. Their combined maximum capacity is 172 MW. Average annual generation within the past 25 years at the station is 656.3 GWh.

Transmission

Transmission lines (230 kilovolt [kV]) extend approximately 0.5 mile from the transformer bank in the switchyard adjacent to the James B. Black powerhouse to the switchyard adjacent to the Pit 5 powerhouse.

Pit 6 Development

Pit 6 Dam and Reservoir

Pit 6 dam and reservoir are located on the Pit River downstream of James B. Black powerhouse. The 183-foot-high, 560-foot-long concrete gravity Pit 6 dam has a crest elevation of 1,432 feet. The top of the dam contains a trash rake, motors for two 42-foot-high by 49-foot-long slide gates and a control building. The control building houses a hydraulic system for two low-level, eight-foot diameter outlets at the base of the dam. The Pit 6 reservoir has a maximum storage capacity of approximately 15,619 af and a maximum surface area of approximately 268 acres. The normal maximum water surface elevation within the reservoir is 1,425 feet. The reservoir serves as the forebay for the Pit 6 powerhouse. Two 18-foot diameter steel penstocks with a total flow capacity of 6,470 cfs extend 602 feet from the dam to the turbines in the powerhouse located at the base of the dam.

Pit 6 Powerhouse

Pit 6 powerhouse, commissioned in August 1965, is located along the east bank of the Pit River at the base of Pit

6 dam. The powerhouse is a four-level reinforced concrete structure, three levels of which are below grade. The structure contains two vertical shaft, Francis reaction turbines, rated at 53,000 hp each and operating at a normal maximum gross head of 155 feet. There are two outdoor vertical axis generators, rated at 44 MVA each, with each unit connected to a three-phase 44 MVA transformer bank that steps up plant output to 230 kV. The maximum generator capacity is 80 MW. Average annual generation over the last 25 years is 373.8 GWh.

Transmission

Transmission lines extend approximately 3.3 miles from the switchyard adjacent to the Pit 6 powerhouse to the Applicant's interconnected transmission system.

Pit 7 Development

Pit 7 Dam and Reservoir

Pit 7 dam and reservoir are located on the Pit River downstream of Pit 6 powerhouse. The Pit 7 dam is a 228-foot-high and 770-foot-long concrete gravity dam. The top of the dam contains a trash rake, motors for two 49-foot by 42-foot slide gates at the crest of the dam, and a control building. The control building houses hydraulic controls for two eight-foot in diameter, low-level outlets at the base of the dam. The Pit 7 reservoir has a maximum storage capacity of 34,611 af and a surface area of approximately 471 acres at a normal maximum water surface elevation of 1,270 feet. As with Pit 6, the Pit 7 reservoir serves as the forebay for the Pit 7 powerhouse. Two penstocks, 15 feet in diameter, extend 572 feet from the dam to the turbines in the powerhouse, located at the base of the dam. Total flow capacity within the penstocks is 7,440 cfs.

Pit 7 Powerhouse

Pit 7 powerhouse, commissioned in September 1965, is located along the east bank of the Pit River at the base of Pit 7 dam. The powerhouse consists of a four-level, reinforced concrete structure, three levels of which are below grade. The powerhouse contains two vertical-shaft reaction turbines that are rated at 70,000 hp each and operate at a normal maximum gross head of 205 feet. Two vertical axis generators are rated at 52.2 (Unit 2) and 62.1 MVA (Unit 1), respectively. Their maximum combined capacity is 112 MW. Each unit is connected to a three-phase, 58 MVA transformer bank that steps up plant output to 230 kV. The average

annual generation over the last 25 years is 512 GWh.

Transmission

Transmission lines extend approximately 3.5 miles from the switchyard adjacent to the Pit 7 powerhouse to the Applicant's interconnected transmission system.

Pit 7 Afterbay

Pit 7 afterbay has a surface area of approximately 69 acres at a normal "maximum" water surface elevation of 1,067 feet (maximum water surface of Shasta Lake). The afterbay dam is a 30-foot-high, steel-reinforced, rock-fill structure, including a variable width concrete gravity weir section. Pit 7 afterbay serves to attenuate changes in the water flow from Pit 7 dam and powerhouse before entering Shasta Lake.

Proposed Facilities

McCloud Development

PG&E proposes to construct a powerhouse located at the base of McCloud dam. Generation output from the proposed powerhouse would be connected to a new transmission line that would be routed from the proposed powerhouse to connect to an existing Pacific Power and Light (PP&L) Substation located approximately 14 miles to the north, in the town of McCloud, California. McCloud Development would use water stored in McCloud Reservoir and released into the Lower McCloud River to meet instream flow requirements and no new impoundments are proposed. With a flow range of 150 cfs to 400 cfs, the turbine and generator set would have an installed capacity of about 5 to 8 MW. The proposed McCloud Development would have an average range of annual energy production of 30 to 40 GWh and average monthly generation would be approximately 2.5 to 3.3 GWh. PG&E proposes to base the final size of the unit, powerhouse hydraulic capacity, and average annual energy production on instream flow requirements included in the new project license.

The proposed powerhouse would be positioned to the south of the current outlet works control building and would be a reinforced concrete-and-block masonry structure designed to enclose and protect the electro-mechanical generation equipment, withstand area snow loads, and prevent possible vandalism. It would be accessed via the existing project road that connects to Forest Road 38N11. The powerhouse would be equipped with a single vertical-axis Francis turbine. The

turbine, which would have a discharge diameter of approximately 54 inches, would operate at about 450 revolutions per minute. The direct-coupled synchronous generator rating would range from 5,600 to 7,500 kW.

The proposed transmission line route from the powerhouse would follow Forest Road 38N11 and then county roads to the existing PP&L Substation approximately 14 miles north in the town of McCloud.

Pit 7 Afterbay Development

PG&E proposes to construct at Pit 7 Afterbay Development, including a powerhouse located on the west side of Pit 7 Afterbay dam at the regulating weir. Generation output from the proposed powerhouse would be connected to a new transmission line that would be routed from the powerhouse to connect to the switchyard located approximately 1.6 miles to the east at Pit 7 powerhouse. The proposed facilities would have no meaningful storage and would operate in a run-of-the-river mode. The available flows for energy production would be dictated by the operation of the upstream Pit 7 powerhouse.

The proposed Pit 7 Afterbay powerhouse would use water released upstream from Pit 7 powerhouse and dam and no new impoundments are proposed. The proposed powerhouse would be configured for two horizontal-axis synchronous generating units, each rated at 5,500 kW and housed in an approximately 30-foot-wide x 110-foot-long intake approach bay. Each of the generating bays would have a design flow of 2,500 cfs. The upstream entrance to each intake bay would include a trashrack to stop large debris from entering the unit. Two radial gates

approximately 26-foot-wide by 52-foot-high would be constructed upstream of the unit to regulate flow and for dewatering the turbine pit. A roller gate would be constructed at the downstream end of each bay or the tailrace to prevent backwatering during maintenance. A combination of ramps, walkways, and ladders would be used in each bay to allow for maintenance access and support the gate operator mechanism. A 20-foot-wide bypass flow bay, which would house a radial gate and operator, would be built in the first phase of construction. The bypass flow bay would be used to pass river flows during the second phase of construction and during times of non-generation. The bypass flow bay also would require a walkway to allow maintenance and operation access and support the gate operator mechanism. A new access road would be constructed to access the powerhouse for construction, operation, and maintenance. The access road would extend between Fenders Ferry Road and the afterbay, just west of Fenders Ferry Bridge. Based on a flow range of 2,500 cfs to 5,000 cfs, the 2-unit powerhouse would accommodate turbine and generator sets capable of an installed capacity of about 5 MW each for a total of 10 MW. The average monthly generation from this proposed powerhouse would be approximately 4.2 GWh.

The proposed powerhouse substation would be fenced and located on the ground near the control house, but above the maximum anticipated flood and tailwater levels. Substation equipment would include a step-up substation to transform energy for the transmission line. Powerhouse controls and switchgear would be installed in a separate building located on the right

bank of the river, positioned above the maximum anticipated water level and inside the substation fence. The building would house the required equipment for control and protection of the generation units and would be equipped with electric heating and cooling. The transmission line would be a 1.6-mile-long, 34.5-kV, wooden-pole line connecting the proposed powerhouse to a new 34.5- to 230-kV transformer, positioned at or near the existing 230-kV Pit 7 switchyard. A new 230-kV circuit breaker and disconnect switch would be connected by a short span to the main bus of the existing Pit 7 switchyard.

1. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits, into the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule:

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Tendering Notice	July 29, 2009.
Notice of Acceptance/Notice of Ready for Environmental Analysis (when FERC approved studies are complete)	October 30, 2009.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	December 29, 2009.
Commission issues Draft EA or EIS	August 11, 2010.
Comments on Draft EA or EIS	September 10, 2010.
Modified Terms and Conditions	November 9, 2010.
Commission Issues Final EA or EIS	February 7, 2011.

o. 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18634 Filed 8-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13448-000]

McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 29, 2009.

On April 29, 2009, McGinnis, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Marmet Hydrokinetic Project, to be located on the Kanawha River, in Kanawha County, West Virginia.

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 Meldahl Hydrokinetic Project consists of: (1) 10 proposed 35 kilowatt turbine-generator units having a total installed capacity of 0.35 megawatts; (2) a 300-foot-long, 13.2 kilovolt transmission line; and (3) appurtenant facilities. The proposed Winfield Hydrokinetic Project would have an average annual generation of 1.533 gigawatt-hours.

Applicant Contact: Bruce D. McGinnis, Sr., CEO, McGinnis, Inc., 502 Second Street Ext., South Point, OH 45680; *phone:* (740) 377-4391.

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-13448) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18635 Filed 8-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13446-000]

McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 29, 2009.

On April 29, 2009, McGinnis, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Meldahl Hydrokinetic Project, to be located on the Ohio River, in Clermont County, Ohio and Bracken County, Kentucky.

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 Meldahl Hydrokinetic Project consists of: (1) 10 proposed 35 kilowatt turbine-generator units having a total installed capacity of 0.35 megawatts; (2) a 2,000-foot-long, 13.2 kilovolt transmission line; and (3) appurtenant facilities. The proposed Winfield Hydrokinetic Project would have an average annual generation of 1.533 gigawatt-hours.

Applicant Contact: Bruce D. McGinnis, Sr., CEO, McGinnis, Inc., 502

Second Street Ext., South Point, OH 45680; *phone:* (740) 377-4391.

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-13446) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18636 Filed 8-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13443-000]

McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 29, 2009.

On April 29, 2009, McGinnis, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Winfield Hydrokinetic Project, to be located on the Kanawha River, in Putnam County, West Virginia.

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 Winfield Hydrokinetic Project consists of: (1) 10 proposed 35 kilowatt turbine-generator units having a total installed capacity of 0.35 megawatts; (2) a 375-foot-long, 13.2 kilovolt transmission line; and (3) appurtenant facilities. The proposed Winfield Hydrokinetic Project would have an average annual generation of 1.533 gigawatt-hours.

Applicant Contact: Bruce D. McGinnis, Sr., CEO, McGinnis, Inc., 502 Second Street Ext., South Point, OH 45680; *phone:* (740) 377-4391.

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 the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13443) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18637 Filed 8-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP08-6-002; CP09-56-000]

Midcontinent Express Pipeline, LLC; Notice of Availability of the Environmental Assessment for the Proposed MEP Amendment and Expansion Projects

July 29, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Midcontinent Express Pipeline, LLC (MEP) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of MEP's proposed Amendment and Expansion Projects. MEP proposes expansion and/or equipment modifications at the previously certificated Lamar Compressor Station in Lamar County, Texas; Atlanta Compressor Station in Cass County, Texas; Perryville Compressor Station in Union Parish, Louisiana; and the expansion and relocation of the previously certificated Vicksburg Compressor Station to Hinds County, Mississippi. Specifically, MEP is proposing to:

- Install one additional G12 compressor unit and associated appurtenant facilities at the Lamar Compressor Station;
- substitute two G16 compressor units for the two previously certificated G12 compressor units and add two additional G16 compressor units and associated appurtenant facilities at the Atlanta Compressor Station and remove the compression-capacity cap for the station;
- install one additional inlet filter/separator at the Perryville Compressor Station;
- relocate the previously certificated Vicksburg Compressor Station from Warren County, Mississippi, to Hinds County, Mississippi, and install one new G12 compressor unit and associated appurtenant facilities at the new Vicksburg Compressor Station site.

The EA has been placed in the public files of the FERC. A limited number of

copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502-8371.

Copies of the EA have been mailed to Federal, State, and local agencies; public interest groups; interested individuals; newspapers and libraries in the project area; Native American groups; and parties to this proceeding. Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

You can make a difference by providing us with your specific comments or concerns about the MEP Amendment and Expansion Projects. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before August 28, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket numbers (CP08-6-002 and CP09-56-000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202-502-8258 or efiling@ferc.gov.

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's internet Web site at <http://www.ferc.gov> under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking "Sign up" or "eRegister." You will be asked to select the type of filing you are making. A

comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of the Gas Branch 3, PJ-11.3.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).¹ Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket numbers excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to the eSubscription link on the

FERC Internet Web site (<http://www.ferc.gov/esubscribenow.htm>).

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9-18632 Filed 8-4-09; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ09-4-000]

Bonneville Power Administration; Notice of Filing

July 29, 2009.

Take notice that on July 10, 2009, Bonneville Power Administration (Bonneville) submitted an errata to correct editorial or typographical errors in their Precedent Transmission Service Agreement (Agreement). Bonneville states that the corrections do not change the Agreement in any substantive way.

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9-18633 Filed 8-4-09; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09-30-000]

Corning Natural Gas Company; Notice of Rate Election

July 29, 2009.

Take notice that on July 27, 2009, Corning Natural Gas Company (Corning) filed a Notice of Rate Election and a Statement of Operating Conditions for NGPA section 311 firm transportation service pursuant to sections 284.123(b)(ii) and 284.123(e) of the Commission's regulations. Corning proposes to adopt as its transportation rate its rate schedule Service Classification 7 which is an existing transportation rate schedule approved by the New York Public Service Commission.

Any person desiring to participate in this rate filing must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

¹ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

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 Friday August 14, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-18638 Filed 8-4-09; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2008-0504; FRL-8940-8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notification of Chemical Exports—TSCA Section 12(b); EPA ICR No. 0795.13, OMB No. 2070-0030

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval, entitled: "Notification of Chemical Exports—TSCA section 12(b)," (EPA ICR No. 0795.13, OMB No. 2070-0030). The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before September 4, 2009.

ADDRESSES: Submit your comments, referencing docket ID Number EPA-HQ-OPPT-2008-0504 to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to oppt.ncic@epa.gov or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA,

725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408-M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-554-1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 6, 2009 (74 FR 9815), EPA sought comments on this renewal ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments related to this renewal ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OPPT-2008-0504, which is available for online viewing at <http://www.regulations.gov>, or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202-566-0280. Use <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in <http://www.regulations.gov>. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official

docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in <http://www.regulations.gov>. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Notification of Chemical Exports—TSCA section 12(b).

ICR Status: This ICR is currently scheduled to expire on November 30, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 12(b) of the Toxic Substances Control Act (TSCA) states, in part, that any person who exports or intends to export to a foreign country a chemical substance or mixture for which submission of data is required under TSCA section 4 or 5(b), or for which a rule, action or order has been proposed or promulgated under TSCA section 5, 6, or 7, shall notify the EPA Administrator of such export or intent to export. The Administrator in turn will notify the government of the importing country of EPA's regulatory action with respect to the substance.

The rule codified at 40 CFR part 707, subpart D requires exporters to submit an annual notice for each country to which a chemical subject to TSCA section 12(b) requirements is exported. In addition, exporters of chemicals subject to TSCA section 4 test rules are allowed to submit a one-time notice to EPA for the export of a TSCA section 4 chemical to each particular country, instead of providing annual notification.

The export notice must include five easily ascertainable items: the name and address of the exporter, the name of the chemical, the country of import, the date of export or intended export, and the section of TSCA under which EPA has taken action (section 4, 5, 6 or 7). There are currently over 1,000 substances or categories of substances that have been regulated or proposed to be regulated under the applicable sections of TSCA.

Responses to this collection of information are mandatory. Respondents may claim all or part of a

notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

Burden Statement: The annual public burden for this collection of information is estimated to be about 1.18 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are companies that export from the United States to foreign countries, or that engage in wholesale sales of, chemical substances or mixtures.

Frequency of Collection: Annual, on occasion.

Estimated Average Number of Responses for Each Respondent: 1.

Estimated No. of Annual Responses: 4,100.

Estimated Total Annual Burden on Respondents: 4,850 hours.

Estimated Total Annual Burden Costs: \$264,255.

Changes in Burden Estimates: There is a decrease of 2,700 hours (from 7,550 hours to 4,850 hours) in the total estimated respondent burden compared with that identified in the information collection last approved by OMB. This decrease represents the net effect of a decrease in the estimated number of notices sent to EPA and a decrease in the number of firms sending notices, based on EPA's recent experience with TSCA section 12(b) notices.

Dated: July 30, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9-18694 Filed 8-4-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0651; FRL-8940-7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notice of Pesticide Registration by States To Meet a Special Local Need (SLN) Under FIFRA Section 24(c); EPA ICR No. 0595.10, OMB Control No. 2070-0055

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 4, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OPP-2008-0651, to (1) EPA online using <http://www.regulations.gov> (our preferred method), by mail—Office of Pesticide Programs (OPP), Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nathanael R. Martin, Field and External Affairs Division, Office of Pesticide Programs, 7506P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-305-6475; fax number: 703-305-5884; e-mail address: martin.nathanael@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 10, 2008 (73 FR 75094), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OPP-2008-0651, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, 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 telephone number is (703) 305-5805. Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Notice of Pesticide Registration by States to Meet a Special Local Need (SLN) under FIFRA section 24(c).

ICR Numbers: EPA ICR No. 0595.10, OMB Control No. 2070-0055.

ICR Status: This ICR is scheduled to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This data collection program is designed to provide EPA with the necessary data to review approval of State-issued pesticide registrations. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 24(c) authorizes the States to register additional uses of federally registered

pesticides for distribution and use within the State to meet a SLN. A State-issued registration under FIFRA section 24(c) is deemed a Federal registration for the purposes of the pesticide's use within the State's boundaries. A State must notify EPA, in writing, of any action it takes, i.e., when it issues, amends, or revokes a State registration. The Agency has 90 days to disapprove the registration. In such cases, the State is responsible for notifying the affected registrant. Pursuant to subpart D of 40 CFR part 162, responses to this collection of information are mandatory.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 52 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and territorial governments.

Estimated Number of Respondents: 60.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 36,036.

Estimated Total Annual Cost: \$2,401,245.

Changes in the Estimates: There is an increase of 12,636 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase reflects the increase in average annual number of applications from 2005–2007. This change is an adjustment.

Dated: July 30, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–18695 Filed 8–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0219; FRL–8940–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; EPA's Design for the Environment Formulator Product Recognition Program; EPA ICR No. 2302.01, OMB Control No. 2070–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: EPA's Design for the Environment Formulator Product Recognition Program; EPA ICR No. 2302.01, OMB No. 2070–NEW. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before September 4, 2009.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2008–0219 to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to oppt.ncic@epa.gov or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 18, 2008 (73 FR 34726), EPA sought comments on this ICR. EPA

sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPPT–2008–0219, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280.

Use EPA's electronic docket and comment system at www.regulations.gov to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in www.regulations.gov as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in www.regulations.gov. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute. For further information about the electronic docket, go to www.regulations.gov.

Title: EPA's Design for the Environment Formulator Product Recognition Program.

ICR Numbers: EPA ICR No. 2302.01, OMB Control No. 2070–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**

when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA's Design for the Environment (DfE) Formulator Product Recognition Program formally recognizes safer products where all ingredients have an environmental and human health profile showing that they are the safest in their functional use class. Under the encouragement of this program, leading companies have made great progress in developing safer, highly effective chemical products. Since the program's inception in 1997, formulators have used the program as a portal to OPPT's unique chemical expertise, information resources, and guidance on greener chemistry. DfE Formulator partners enjoy Agency recognition, including the use of the DfE logo on products with the safest possible formulations. In the future, EPA expects much greater program participation due to rising demand for safer products. This information collection enables EPA to accommodate participation by more than nine formulators each year and to enhance program transparency.

Information collection activities associated with this program will assist the Agency in meeting the goals of the Pollution Prevention Act (PPA) by providing resources and recognition for businesses committed to promoting and using safer chemical products. In turn, the program will help businesses meet corporate sustainability goals by providing the means to, and an objective measure of, environmental stewardship. Investment analysts and advisers seek these types of measures in evaluating a corporation's sustainability profile and investment worthiness. Formulator Program partnership is an important impetus for prioritizing and completing the transition to safer chemical products. The Formulator Program is also needed to promote greater use of safer chemical products by companies unaware of the benefits of such a change.

EPA has tailored its request for information, and especially the Formulator Product Recognition Program application forms, to ensure that the Agency requests only that information essential to verify applicants' eligibility for recognition. Responses to the collection of information are voluntary. Respondents may claim all or part of a notice

confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to 22 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are companies that formulate end-use, for-sale chemical products.

Frequency of Collection: On occasion.

Estimated Average Number of Responses for Each Respondent: 1.

Estimated No. of Respondents: 32.

Estimated Total Annual Burden on Respondents: 691 hours.

Estimated Total Annual Costs: \$815,473 (including \$382,800 in M&O costs).

Changes in Burden Estimates: This is a new ICR. This estimated burden for this new ICR is estimated to be 691 hours and is a program change.

Dated: July 30, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9-18696 Filed 8-4-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8940-4]

EPA Science Advisory Board Staff Office; Notification of Two Public Teleconferences of the Chartered Science Advisory Board: Additional Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In a **Federal Register** notice dated July 15, 2009, the EPA Science Advisory Board (SAB) Staff Office announced a public teleconference on August 28, 2009 for a chartered SAB quality review of its draft report on the Agency's Expert Elicitation White Paper. That teleconference will occur as announced, but will include the addition of a briefing on the SAB Integrated Nitrogen Committee draft report. The briefing will provide information in preparation for a future quality review of the Integrated Nitrogen Committee report to be announced in a future **Federal Register** notice. This corrected notice announces the addition of the Integrated Nitrogen Committee.

DATES: The public teleconference date will be Friday, August 28, 2009 from 2 p.m. to 3:30 p.m. (all times are Eastern Time).

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Miller, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), (202) 343-9982.

SUPPLEMENTARY INFORMATION: The EPA published a document in the **Federal Register** notice dated July 15, 2009, FR Doc. E9-16842, on pages 34348-34349, the EPA Science Advisory Board (SAB) Staff Office announced a public teleconference on August 28, 2009 for a chartered SAB quality review of its draft report on the Agency's Expert Elicitation White Paper. Background (c) as follows is being added for discussion at the meeting.

(c) *Briefing To Prepare for the Quality Review of the SAB's Draft Integrated Nitrogen Research Report:* During this teleconference, the SAB will also receive a briefing to help Board members prepare for a future quality review of a draft SAB Integrated Nitrogen Committee draft report. The SAB quality review will occur at a future public meeting or teleconference yet to be announced. The briefing will summarize the Committee's original study on reactive nitrogen. Reactive nitrogen, a form of nitrogen consisting mainly of ammonium and nitrate, is "fixed" by natural or human-driven processes or recycled from decaying organic matter. Increasing quantities of reactive nitrogen released by human activities, such as the production and use of synthetic fertilizers, burning of fossil fuel, and planting of nitrogen-fixing crops currently surpasses the amount of nitrogen fixed by natural processes (e.g., microbial activities, wildfire). Adverse environmental effects may occur when reactive nitrogen occurs in amounts that exceed what the ecosystem can normally use or recycle. Adverse effects may include

degradation of air and water quality, harmful algae blooms, hypoxia, fish kills, loss of drinking water supplies, loss of biodiversity, forest declines, and human health effects.

The SAB Integrated Nitrogen Committee undertook this study to assess linkages among the environmental effects of reactive nitrogen and to explore their implications for nitrogen research and risk management. The study recommends a more integrated approach to reactive nitrogen research and identifies opportunities for integrated approaches for nitrogen management.

Information about the work of the SAB Integrated Nitrogen Committee is available on the SAB Web site at http://yosemite.epa.gov/sab/sabproduct.nsf/yosemistr_activites/Nitrogen%20Project?OpenDocument.

Dated: July 30, 2009.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9-18697 Filed 8-4-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. *The Adirondack Trust Company Employee Stock Ownership Trust*, Saratoga Springs, New York; to acquire an additional 25 voting shares of 473 Broadway Holding Corporation, and thereby indirectly acquire an additional 1,000 voting shares of The Adirondack Trust Company, both of Saratoga Springs, New York.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166-2034:

1. *Southern Bancorp, Inc.*, Arkadelphia, Arkansas; to merge with First Delta Bankshares, Inc., Blytheville, Arkansas, and thereby indirectly acquire Bank of Trumann, Trumann, Arkansas, and First National Bank in Blytheville, Blytheville, Arkansas.

C. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105-1579:

1. *Mitsubishi UFJ Financial Group, Inc.*, *The Bank of Tokyo-Mitsubishi UFJ, Ltd.*, both of Tokyo, Japan, and UnionBanCal Corporation, San Francisco, California; to acquire First State Bank-Winnie, Winnie, Texas, and simultaneously merge it with and into Union Bank, National Association, San Francisco, California.

Board of Governors of the Federal Reserve System, July 30, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9-18639 Filed 8-4-09; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 2009.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166-2034:

1. *St. Jacob Bancshares, Inc.*; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of St. Jacob, both of St. Jacob, Illinois.

Board of Governors of the Federal Reserve System, July 31, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9-18692 Filed 8-4-09; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202)-523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 011117-048.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; ANL Singapore Pte Ltd.; CMA-CGM; Compagnie Maritime Marfret S.A.; Hamburg-Süd; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment clarifies certain agreement authority in the context of Australian law, revises the minimum level of service, and deletes obsolete material from Appendix A.

Agreement No.: 011275-029.

Title: Australia and New Zealand/United States Discussion Agreement.

Parties: ANL Singapore PTE LTD.; Hamburg-Südamerikanische Dampfschiffahrts-Gesellschaft KG; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add CMA CGM S.A. as a party to the agreement.

Agreement No.: 011938-005.

Title: HSDG/Alianca/CSAV/Libra/CLNU Cooperative Working Agreement.

Parties: Hamburg-Sud ("HSDG"); Alianca Navegacao e Logistica Ltda. e CIA ("Alianca"); Companhia Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; and Montemar Maritima S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment reduces the number of vessel strings operated, deletes obsolete language, revises the duration of the agreement, and makes corresponding changes to the agreement. The parties request expedited review.

Agreement No.: 012073.

Title: MSC/CSAV Group Vessel Sharing Agreement.

Parties: MSC Mediterranean Shipping Company SA; Companhia Sud Americana de Vapores S.A.; Companhia Libra de Navegacao; and Companhia Libra de Navegacion Uruguay S.A..

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between the U.S. Atlantic Coast and Argentina, Brazil, Uruguay, and Venezuela. The parties request expedited review.

Agreement No.: 012074.

Title: HLAG/UASC Slot Exchange Agreement.

Parties: Hapag-Lloyd AG and United Arab Shipping Company.

Filing Party: Wayne Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes UASC to provide HLAG with slots on UASC's service between the U.S. East Coast and Italy and Spain. In exchange, HLAG agrees to provide slots to UASC on its service in the Indian Subcontinent/Europe trade.

Agreement No.: 201203-001.

Title: Port of Oakland/Oakland Marine Terminal Operator Agreement.

Parties: Eagle Marine Services, Ltd.; Port of Oakland; Seaside Transportation Service LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; Transbay Container Terminal, Inc.; and Trapac, Inc.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036, and Paul Heylman, Esq.; Saul Ewing LLP; 2600 Virginia Avenue NW.; Suite 1000; Washington, DC 20037.

Synopsis: The agreement would add Ports of America Outer Harbor Terminal, LLC as a party to the agreement.

Dated: July 31, 2009.

By Order of the Federal Maritime Commission.

Karen V. Gregory,
Secretary.

[FR Doc. E9-18752 Filed 8-4-09; 8:45 am]

BILLING CODE P

GOVERNMENT ACCOUNTABILITY OFFICE

Medicaid and CHIP Payment and Access Commission Nominations

AGENCY: Government Accountability Office (GAO).

ACTION: Notice on letters of nomination.

SUMMARY: The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) established the Medicaid and CHIP Payment and Access Commission (MACPAC) to review Medicaid and CHIP access and payment policies and to advise Congress on issues affecting Medicaid and CHIP. CHIPRA gave the Comptroller General of the United States responsibility for appointing MACPAC's 17 members,

with initial appointments to be made not later than January 1, 2010. For these appointments, I am announcing the following: Letters of nomination and resumes will be accepted through October 1st, 2009 to ensure adequate opportunity for review and consideration of nominees prior to appointment of members.

ADDRESSES: GAO: 441 G Street, NW., Washington, DC 20548 or MACPACappointments@gao.gov.

FOR FURTHER INFORMATION: GAO: Office of Public Affairs, (202) 512-4800, Public Law 111-3, Section 506; 42 U.S.C. 1396.

Gene L. Dodaro,

Acting Comptroller General of the United States.

[FR Doc. E9-18596 Filed 8-4-09; 8:45 am]

BILLING CODE 1610-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: National Youth in Transition Database and Youth Outcome Survey—Final Rule.

OMB No.: 0970-0340.

Description: The Foster Care Independence Act of 1999 (42 U.S.C. 1305 *et seq.*) as amended by Public Law 106-169 requires State child welfare agencies to collect and report to the Administration on Children and Families (ACF) data on the characteristics of youth receiving independent living services and information regarding their outcomes. The regulation implementing the National Youth in Transition Database, listed in 45 CFR 1356.80, contains standard data collection and reporting requirements for States to meet the law's requirements. ACF will use the information collected under the regulation to track independent living services, assess the collective outcomes of youth, and potentially to evaluate State performance with regard to those outcomes consistent with the laws mandate.

Respondents: State agencies that administer the John H. Chafee Foster Care Independence Program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Data File	35	2	999	69,930
Youth Outcome Survey	13,273	1	0.17	2,256.41

Estimated Total Annual Burden Hours: 72,186.41.

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 31, 2009.
Janean Chambers,
Reports Clearance Officer.
 [FR Doc. E9-18658 Filed 8-4-09; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Program Performance Standards—Final rule.

OMB No.: 0970-0148.

Description: Head Start Program Performance Standards require Head Start and Early Head Start Programs and Delegate Agencies to maintain program records. The Administration for Children and Families, Office of Head Start, is proposing to renew, without changes, the authority to require certain recordkeeping in all programs as provided for in 45 CFR part 1304, Head Start Program Performance Standards. These standards prescribe the services that Head Start and Early Head Start programs provide to enrolled children and their families.

Respondents: Head Start and Early Head Start grantees and delegate agencies.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Standard	2,590	16	41.80	1,732,192

Estimated Total Annual Burden Hours: 1,732,192.

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 28, 2009.
Janean Chambers,
Reports Clearance Officer.
 [FR Doc. E9-18675 Filed 8-4-09; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at <http://www.workplace.samhsa.gov> and <http://www.drugfreeworkplace.gov>.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2-1042, One Choke Cherry Road, Rockville, Maryland 20857; 240-276-2600 (voice), 240-276-2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414-328-7840/800-877-7016 (*Formerly:* Bayshore Clinical Laboratory);
 ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585-429-2264;
 Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901-794-5770/888-290-1150;
 Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615-255-2400 (*Formerly:* Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.);
 Baptist Medical Center-Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-202-2783 (*Formerly:* Forensic Toxicology Laboratory Baptist Medical Center);
 Clendo Reference Laboratory, Avenue Santa Cruz #58, Bayamon, Puerto Rico 00959, 787-620-9095;
 Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215-2802, 800-445-6917;
 Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229-671-2281;
 DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310;
 DynaLIFE Dx *, 10150-102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780-451-3702/800-661-9876, (*Formerly:* Dynacare Kasper Medical Laboratories);
 ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662-236-2609;
 Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519-679-1630;
 Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823, (*Formerly:* Laboratory Specialists, Inc.);
 Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804-378-9130, (*Formerly:* Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.);
 Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713-856-8288/800-800-2387;
 Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ

08869, 908-526-2400/800-437-4986, (*Formerly:* Roche Biomedical Laboratories, Inc.);
 Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919-572-6900/800-833-3984, (*Formerly:* LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group);
 Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866-827-8042/800-233-6339, (*Formerly:* LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center);
 LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913-888-3927/800-873-8845, (*Formerly:* Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.);
 Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905-817-5700, (*Formerly:* Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.);
 MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651-636-7466/800-832-3244;
 MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503-413-5295/800-950-5295;
 Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612-725-2088;
 National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661-322-4250/800-350-3515;
 One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888-747-3774, (*Formerly:* University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory);
 Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800-328-6942, (*Formerly:* Centinela Hospital Airport Toxicology Laboratory);
 Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509-755-8991/800-541-7891x7;
 Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858-643-5555;
 Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770-452-1590/800-729-6432, (*Formerly:* SmithKline Beecham

Clinical Laboratories; SmithKline Bio-Science Laboratories);
 Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610-631-4600/877-642-2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);
 Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866-370-6699/818-989-2521, (Formerly: SmithKline Beecham Clinical Laboratories);
 S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505-727-6300/800-999-5227;
 South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574-234-4176 x276;
 Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602-438-8507/800-279-0027;
 St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405-272-7052;
 Sterling Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800-442-0438;
 Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573-882-1273;
 Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305-593-2260;
 US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755-5235, 301-677-7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal**

Register, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. E9-18701 Filed 8-4-09; 8:45 am]

BILLING CODE 4160-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: September 15-16, 2009.

Closed: September 15, 2009, 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Open: September 16, 2009, 8:30 a.m. to 1 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and

program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401. (301) 443-2755.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.drugabuse.gov/NACDA/NACDAHome.html>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 28, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18492 Filed 8-4-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, N44DA-9-8874 Design and Synthesis of Treatment Agents.

Date: August 7, 2009.

Time: 12:30 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Minna Liang, PhD, Scientific Review Officer, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6101 Executive Blvd., Room 220, MSC 8401, Bethesda, MD 20852. 301-435-1432. liangm@nida.nih.gov.

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. 93279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 28, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18491 Filed 8-4-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pharmacotherapy.

Date: August 11, 2009.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Deborah L. Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7850, Bethesda, MD 20892, 301-435-1224. lewisdeb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Grand Opportunity Applications.

Date: August 11, 2009.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanna M. Pyper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435-1151. pyperj@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Grand Opportunity Applications.

Date: August 11, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301-435-1050. freundr@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Rehabilitation Engineering.

Date: August 19, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, B.A., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435-1786. pelhamj@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 29, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18707 Filed 8-4-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel.

Preparation and Distribution of Research Drug Products (N01DA-10-7772).

Date: August 25, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401. (301) 435-1439. Lf33c.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: July 28, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18493 Filed 8-4-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The intramural programs and projects and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the intramural programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council NACHHD Subcommittee on Planning and Policy.

Date: August 24, 2009.

Open: 10 a.m. to 11 a.m.

Agenda: Topics to be discussed include: (1) Report of the Director; (2) Budget Updates; (3) Legislative Updates.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 2A03, Bethesda, MD 20892. (Telephone Conference Call).

Closed: 11 a.m. to 12 p.m.

Agenda: To review and evaluate the Division of Intramural Research site visit report.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 2A03 Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Elizabeth Wehr, Senior Public Health Analyst, Office of Science Policy, Analysis and Communication, NICHD/NIH/DHHS, 31 Center Drive, Suite 2A-18, Bethesda, MD 20892, 301-496-0805.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the Executive Secretary's need for confirmation from subcommittee members on their availability to participate in this meeting. Information is also available on the Institute's/Center's home page: <http://www.nichd.nih.gov/about/>

nachhd.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: July 28, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18487 Filed 8-4-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel ARRA Grant Opportunities—Image Resource for Biology—ZGM1 CBB-4 (IR)

Date: August 14, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mona R. Trempe, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301-594-3998, trempe@mail.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. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.701, ARRA Related Biomedical Research and Research

Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 28, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18488 Filed 8-4-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel, ARRA Grant Opportunities—Multifunctional Particles for Targeting and Delivery—ZGM1 CBB-4 (MP).

Date: August 12, 2009.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mona R. Trempe, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892. 301-594-3998.

trempe@mail.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. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.701, ARRA Related Biomedical Research and Research

Support Awards, National Institutes of Health, HHS)

Dated: July 28, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18490 Filed 8-4-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Request for Information

Notice is hereby given of a Request for Information (RFI): Updating the Interagency Autism Coordinating Committee Strategic Plan for Autism Spectrum Disorder (ASD) Research, NOT-MH-09-013, issued by the National Institute of Mental Health on behalf of the Interagency Autism Coordinating Committee (IACC).

The purpose of this RFI is to request input from ASD stakeholders to inform the next update of the Strategic Plan. Please see the official RFI notice at <http://grants.nih.gov/grants/guide/notice-files/NOT-MH-09-013.html> for more information and instructions for responding by the deadline of August 21, 2009. All responses must be submitted electronically via the Web-based form found at <http://www.acclaroresearch.com/oarc/rfi/>.

Contact Person: Attention: RFI on Updating the Strategic Plan for ASD Research, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 8235, MSC 9669, Bethesda, MD 20892-9669, iacc@mail.nih.gov.

Information about the IACC is available on the Web site: <http://www.iacc.hhs.gov>.

Dated: July 29, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-18704 Filed 8-4-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2009-0050]

Privacy Act of 1974: U.S. Immigration and Customs Enforcement—005 Trade Transparency Analysis and Research (TTAR) System of Records

AGENCY: Privacy office, DHS.

ACTION: Notice of privacy act system of records.

SUMMARY: U.S. Immigration and Customs Enforcement (ICE) is republishing the system of records notice (SORN) for the Trade Transparency Analysis and Research (TTAR) system. No comments were received through the **Federal Register** comment procedure. TTAR contains trade and financial data that is analyzed to generate leads for and otherwise support ICE investigations of trade-based money laundering, contraband smuggling, trade fraud, and other financial crimes. The data in TTAR is generally maintained in the ICE Data Analysis and Research Trade Transparency System (DARTTS), a software application and data repository that conducts analysis of trade and financial data to identify statistically anomalous transactions that may warrant investigation for money laundering or other import-export crimes. Additionally, a Privacy Impact Assessment for DARTTS has been posted on the Department's privacy Web site. (See www.dhs.gov/privacy and follow the link to "Privacy Impact Assessments.") A final rule is also being published in this issue of the **Federal Register** in which the Department exempts portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: The established system of records was effective as of December 1, 2008, based upon the prior TTAR system of records notice published on October 31, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS-2009-0050 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 703-483-2999.

- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket, to read background documents, or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly, Privacy Officer, (202-732-

3300), U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, e-mail: ICEPrivacy@dhs.gov, or Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Transparency Analysis and Research (TTAR) system of records is owned by the ICE Office of Investigations Trade Transparency Unit (TTU) and is maintained for the purpose of enforcing criminal laws pertaining to trade through trade transparency. Trade transparency is the concept of examining U.S. and foreign trade data to identify anomalies in patterns of trade. Such anomalies can indicate trade-based money laundering or other import-export crimes that ICE is responsible for investigating, such as contraband smuggling, trafficking of counterfeit goods, misclassification of goods, and the over- or under-valuation of goods to hide the proceeds of illegal activities. TTAR contains trade and financial data received from U.S. Customs and Border Protection (CBP), U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN), other Federal agencies and foreign governments. TTAR data is primarily related to international commercial trade and contains little information on the normal day-to-day activities of individual consumers.

As part of the trade transparency investigative process, ICE investigators and analysts must understand the relationships between importers and exporters and the financing for a set of trade transactions to determine which transactions are suspicious and warrant investigation. If performed manually, this process often involves hours of analysis of voluminous data for a particular case or operation. To automate and expedite this process, the former U.S. Customs Service created the Data Analysis and Research Trade Transparency System (DARTTS), a software application and data repository that conducts analysis of trade and financial data to identify statistically anomalous transactions that may warrant investigation for money laundering or other import-export crimes. DARTTS is specifically designed to make this investigative process more efficient by automating the analysis and identification of anomalies for the investigator. While DARTTS does increase the efficiency of data analysis, DARTTS does not allow ICE

agents and analysts to obtain any data they could not otherwise access in the course of their investigative activities.

DARTTS does not seek to predict future behavior or "profile" individuals, *i.e.*, look for individuals who meet a certain pattern of behavior that has been pre-determined to be suspect. Instead, it analyzes and identifies trade and financial transactions that are statistically anomalous. Investigators gather additional facts, verify the accuracy of the DARTTS data, and use their judgment and experience to determine if the anomalous transactions are in fact suspicious and warrant further investigation. Not all anomalies lead to formal investigations. DARTTS can also identify links (relationships) between individuals or entities based on commonalities, such as identification numbers, addresses, or other information. These commonalities in and of themselves are not suspicious, but in the context of additional information they sometimes help investigators to identify potentially criminal activity and identify other suspicious transactions, witnesses, or suspects.

With the creation of the U.S. Department of Homeland Security (DHS) in 2003, the criminal investigative arm of the U.S. Customs Service, which included the TTU and the DARTTS system, was transferred to ICE. As part of DHS's ongoing effort to ensure legacy records transferred to DHS are maintained in compliance with the Privacy Act, ICE proposes to establish this new system of records to cover the data ICE maintains for trade transparency analysis, including the data maintained in DARTTS. A Privacy Impact Assessment (PIA) was conducted on DARTTS because it maintains personally identifiable information. The DARTTS PIA is available on the Department of Homeland Security (DHS) Privacy Office Web site at www.dhs.gov/privacy.

Individuals may request information about records pertaining to them stored in DARTTS as outlined in the "Notification Procedure" section below. ICE reserves the right to exempt various records from release pursuant to exemptions 5 U.S.C. 552a(j)(2) and (k)(2) of the Privacy Act.

Consistent with DHS's information sharing mission, information stored in the DARTTS may be shared with other DHS components, with foreign governments with whom DHS has entered into international information sharing agreements for trade data for the purpose of enforcing customs laws, and with appropriate Federal, State, local, tribal, foreign, or international

government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

Because TTAR contains information that relates to official DHS national security, law enforcement, immigration, and intelligence activities and is used in support of those activities, the Department published a proposed rulemaking seeking to exempt the TTAR system of records from various provisions of the Privacy Act, including the requirement that individuals be provided access to and correction of their own records. These exemptions are permitted by the Privacy Act and are needed to protect information relating to DHS law enforcement or intelligence activities from disclosure to subjects or others related to these activities. For a complete discussion of the specific exemptions proposed and the reasons they were claimed, please see the notice of proposed rulemaking in the **Federal Register**, 73 FR 64890 (Oct. 31, 2008). A final rulemaking is published concurrently to this notice in this issue of the **Federal Register**.

Public Comments

In the October 31, 2008 publication of the TTAR SORN, the Department requested public comments on the SORN and the proposed rulemaking. ICE received no public comments and concluded that no changes to the SORN are warranted at this time.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access

to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the TTAR system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

DHS/ICE-005.

SYSTEM NAME:

Trade Transparency Analysis and Research (TTAR).

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

Records are maintained at the Immigration and Customs Enforcement Headquarters in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: (a) Individuals who, as importers, exporters, shippers, transporters, brokers, owners, purchasers, consignees, or agents thereof, participate in the import or export of goods to or from the U.S. or to or from nations with which the U.S. has entered an agreement to share trade information; and (b) individuals who participate in financial transactions that are reported to the U.S. Treasury Department under the Bank Secrecy Act or other U.S. financial crimes laws and regulations (*e.g.*, individuals who participate in cash transactions exceeding \$10,000; individuals who participate in a reportable suspicious financial transaction).

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Names;
- Addresses (home or business);
- Trade identifier numbers (*e.g.*, Importer ID, Exporter ID, Manufacturer ID);

- Social Security/tax identification numbers;
- Passport numbers;
- Account numbers (e.g., bank account);
- Description and/or value of trade goods;
- Country of origin/export; and
- Description and/or value of financial transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 545 (Smuggling goods into the United States); 18 U.S.C. 1956 (Laundering of Monetary Instruments); and 19 U.S.C 1484 (Entry of Merchandise).

PURPOSE:

The purpose of this system is to enforce criminal laws pertaining to trade, financial crimes, smuggling, and fraud, specifically through the analysis of raw financial and trade data in order to identify potential violations of U.S. criminal laws pertaining to trade, financial crimes, smuggling, and fraud and to support existing criminal law enforcement investigations into related criminal activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when (1) DHS or any component thereof; (2) any employee of DHS in his/her official capacity; (3) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or (4) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation; and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being

conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information, or harm to an individual; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

I. To appropriate Federal, State, local, tribal, or foreign governmental agencies

or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws.

J. To a Federal, State, or local agency, or other appropriate entity or individual, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or anti-terrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

K. To a Federal, State, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

L. To international and foreign governmental authorities in accordance with law and formal or informal international agreements.

M. To Federal and foreign government intelligence or counterterrorism agencies when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DHS reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

N. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations where DHS is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance national security or identify other violations of law.

O. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals

covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records may be retrieved by any of the personal identifiers stored in the system including name, business address, home address, importer ID, exporter ID, broker ID, manufacturer ID, social security number, trade and tax identifying numbers, passport number, or account number. Records may also be retrieved by non-personal information such as transaction date, entity/institution name, description of goods, value of transactions, and other information.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The system maintains a real-time auditing function of individuals who access the system.

RETENTION AND DISPOSAL:

ICE is in the process of drafting a proposed record retention schedule for the information maintained in TTAR. ICE anticipates retaining the records in TTAR for five years and then archiving records for five additional years, for a total retention period of ten years. The five-year retention period for records is necessary to create a data set large enough to effectively analyze anomalies and patterns of behavior in trade transactions. Records older than five years will be archived for five additional

years and will only be used to provide a historical basis for anomalies in current trade activity. The original CD-ROMs containing the raw data will be retained for five years for the purpose of data integrity and system maintenance.

SYSTEM MANAGER(S) AND ADDRESS:

Unit Chief, Trade Transparency Unit, ICE Office of Investigations, 500 12th Street, SW., Washington, DC 20024.

NOTIFICATION PROCEDURES:

The Secretary of Homeland Security has exempted this system from notification, access, and amendment because of the law enforcement nature of the information. However, ICE will review requests on a case by case and release information as appropriate. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,

- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

(1) U.S. Customs and Border Protection (CBP) import data collecting using CBP Form 7501, "Entry Summary."

(2) U.S. Department of Commerce export data collected using Commerce Department Form 7525-V, "Shipper's Export Declaration."

(3) U.S. Exports of Merchandise Dataset (a publicly available aggregated U.S. export dataset purchased from the U.S. Department of Commerce).

(4) Foreign import and export data provided by partner countries pursuant to a Customs Mutual Assistance Agreement (CMAA) or other similar agreement.

(5) Financial Transaction Reports from Treasury Department's Financial Crimes Enforcement Network (FinCEN), specifically: (a) Currency Monetary Instrument Reports (CMIRs)—Declarations of currency or monetary instruments in excess of \$10,000 made by persons coming into or leaving the United States; (b) Currency Transaction Reports (CTRs)—Deposits or withdrawals of \$10,000 or more in currency into or from depository institutions; (c) Suspicious Activity Reports (SARs)—Information regarding suspicious financial transactions within depository institutions, casinos, and the securities and futures industry; and (d) Report of Cash Payments over \$10,000 Received in a Trade or Business—Report of merchandise purchased with \$10,000 or more in currency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

Dated: July 30, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-18623 Filed 8-4-09; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information
Collection under Review; Form G-146,
Nonimmigrant Checkout Letter; OMB
Control No. 1653-0020.

The Department of Homeland
Security, U.S. Immigration and Customs
Enforcement (USICE), is submitting the
following information collection request
for review and clearance in accordance
with the Paperwork Reduction Act of
1995. The Information Collection was
previously published in the **Federal
Register** on June 2, 2009 Vol. 74 No. 104
26415, allowing for a 60 day public
comment period. USICE received no
comments on this Information
Collection from the public during this
60 day period.

The purpose of this notice is to allow
an additional 30 days for public
comments. Comments are encouraged
and will be accepted for thirty days
September 4, 2009.

Written comments and suggestions
from the public and affected agencies
regarding items contained in this notice
and especially with regard to the
estimated public burden and associated
response time should be directed to the
Office of Information and Regulatory
Affairs, Office of Management and
Budget. Comments should be addressed
to the OMB Desk Officer for U.S.
Immigration and Customs Enforcement,
Department of Homeland Security, and
sent via electronic mail to
oir_submission@omb.eop.gov or faxed
to (202) 395-5806.

Written comments and suggestions
from the public and affected agencies
concerning the proposed collection of
information should address one or more
of the following four points:

(1) Evaluate whether the proposed
collection of information is necessary
for the proper performance of the
functions of the agency, including
whether the information will have
practical utility;

(2) Evaluate the accuracy of the
agency's estimate of the burden of the
proposed collection of information,
including the validity of the
methodology and assumptions used;

(3) Enhance the quality, utility, and
clarity of the information to be
collected; and

(4) Minimize the burden of the
collection of information on those who
are to respond, including through the
use of appropriate automated,
electronic, mechanical, or other
technological collection techniques or
other forms of information technology,
e.g., permitting electronic submission of
responses.

Overview of This Information Collection

(1) *Type of Information Collection:*
Extension of a currently approved
Information Collection.

(2) *Title of the Form/Collection:*
Nonimmigrant Checkout Letter.

(3) *Agency form number, if any, and
the applicable component of the
Department of Homeland Security
sponsoring the collection:* Form G-146,
U.S. Immigration and Customs
Enforcement.

(4) *Affected public who will be asked
or required to respond, as well as a brief
abstract:* Primary: Individual or
Households. When an alien (other than
one who is required to depart under
safeguards) is granted the privilege of
voluntary departure without the
issuance of an Order to Show Cause, a
control card is prepared. If, after a
certain period of time, a verification of
departure is not received, actions are
taken to locate the alien or ascertain his
or her whereabouts. Form G-146 is used
to inquire of persons in the United
States or abroad regarding the
whereabouts of the alien.

(5) *An estimate of the total number of
respondents and the amount of time
estimated for an average respondent to
respond:* 20,000 responses at 10 minutes
(.16) per response.

(6) *An estimate of the total public
burden (in hours) associated with the
collection:* 3,220 annual burden hours

Requests for a copy of the proposed
information collection instrument, with
instructions; or inquiries for additional
information regarding this Information
Collection should be requested via
e-mail to: forms.ice@dhs.gov with "ICE
Form G-146" in the subject line.

Dated: July 30, 2009.

Joseph M. Gerhart,

Chief, Records Management Branch, Office
of Asset Management, U.S. Immigration and
Customs Enforcement, Department of
Homeland Security.

[FR Doc. E9-18608 Filed 8-4-09; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information
Collection Under Review; Form I-43,
Baggage and Personal Effects of
Detained Alien, OMB No. 1653-0023.

The Department of Homeland
Security, U.S. Immigration and Customs
Enforcement (USICE), is submitting the
following information collection request
for review and clearance in accordance
with the Paperwork Reduction Act of
1995. The Information Collection was
previously published in the **Federal
Register** on June 2, 2009, Vol. 74, No.
104 26417, allowing for a 60 day public
comment period. USICE received no
comments on this Information
Collection from the public during this
60 day period.

The purpose of this notice is to allow
an additional 30 days for public
comments. Comments are encouraged
and will be accepted for thirty days
September 3, 2009.

Written comments and suggestions
from the public and affected agencies
regarding items contained in this notice
and especially with regard to the
estimated public burden and associated
response time should be directed to the
Office of Information and Regulatory
Affairs, Office of Management and
Budget. Comments should be addressed
to the OMB Desk Officer for U.S.
Immigration and Customs Enforcement,
Department of Homeland Security, and
sent via electronic mail to
oir_submission@omb.eop.gov or faxed
to (202) 395-5806.

Written comments and suggestions
from the public and affected agencies
concerning the proposed collection of
information should address one or more
of the following four points:

(1) Evaluate whether the proposed
collection of information is necessary
for the proper performance of the
functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved Information Collection.

(2) *Title of the Form/Collection:* Baggage and Personal Effects of Detained Alien.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-43, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form is used when an arrested alien has been placed in detention or granted voluntary departure under safeguard. The alien completes a voluntary statement of the amount and location of baggage or other personal property in the United States not in his or her immediate possession. It is the responsibility of the arresting officer to ensure that the alien is afforded a reasonable opportunity to collect money due or dispose of such property. The form also protects the government from a later claim by the alien that an opportunity was not given to obtain personal effects before departing the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600,000 responses at 1 minute (.0167 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,020 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information regarding this Information Collection should be requested via e-mail to: forms.ice@dhs.gov with "ICE Form I-43" in the subject line.

Dated: July 30, 2009.

Joseph M. Gerhart,

Chief, Records Management Branch, Office of Asset Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9-18606 Filed 8-4-09; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-643, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Form I-643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status; OMB Control No. 1615-0070.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 21, 2009, at 74 FR 23876 allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 4, 2009. This process is conducted in accordance with 5 CFR 1320.10.

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), and to the Office of Information and Regulatory Affairs to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-5806 or via e-mail at oir_submission@omb.eop.gov.

When submitting comments by e-mail please make sure to add OMB Control Number 1615-0070 in the subject box. Written comments and suggestions from the public and affected agencies 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic 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:* Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-643, 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.* Refugees and asylees, Cuban/Haitian Entrants under section 202 of Public Law 99-603, and Amerasians under Public Law 97-359, must use this form when applying for adjustment of status, with the U.S. Citizenship and Immigration Services (USCIS). USCIS will provide the data collected on this form to the Department of Health and Human Services (HHS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 55 minutes (.916 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 178,620 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210; Telephone 202-272-8377.

Dated: July 30, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9-18657 Filed 8-4-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-777, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I-777, Application for Issuance or Replacement of Northern Mariana Card; OMB Control No. 1615-0042.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 13, 2009, at 74 FR 22563, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 4, 2009. This process is conducted in accordance with 5 CFR 1320.10.

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), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-5806 or via e-mail at oir_submission@omb.eop.gov.

When submitting comments by e-mail please make sure to add OMB Control Number 1615-0042. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Issuance or Replacement of Northern Mariana Card.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-777. 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.* This information collection is used by applicants applying for a Northern Mariana identification card if they received United States citizenship pursuant to Public Law 94-241 (Covenant to Establish a Commonwealth of the Northern Mariana Islands).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov>.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210; Telephone 202-272-8377.

July 30, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9-18656 Filed 8-4-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N-4, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N-4, Monthly Report Naturalization Papers; OMB Control Number 1615-0051.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 13, 2009, at 74 FR 22564, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 4, 2009. This process is conducted in accordance with 5 CFR 1320.10.

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), and to the Office of Information and Regulatory Affairs to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-5806 or via e-mail at oir_submission@omb.eop.gov.

When submitting comments by e-mail please make sure to add OMB Control Number 1615-0051 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Monthly Report Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-4; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: *State or local Governments.* Section 339 of the Immigration and Nationality Act (Act) requires that the clerk of each court that administers the oath of allegiance notify U.S. Citizenship and Immigration Services (USCIS) of all persons to whom the oath of allegiance for naturalization is administered, within 30 days after the close of the month in which the oath was administered. This form provides a format for submitting a list of those persons to USCIS and provides accountability for the delivery of the certificates of naturalization as required under that section of law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 160 respondents at 12 responses annually at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210; Telephone 202-272-8377.

July 30, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9-18655 Filed 8-4-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Federal Radiological Preparedness Coordinating Committee; Notice of Public Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) is holding a public meeting on September 16, 2009 in Washington, DC.

DATES: The meeting will take place on September 16, 2009. The session open to the public will be from 9 a.m. to 11 a.m. Send written statements and requests to make oral statements to the contact person listed below by close of business September 7, 2009.

ADDRESSES: The meeting will be held in the Large First Floor conference room in the North building of the Technology World Building Conference Facility located at 800 K St. NW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Timothy Greten, FRPCC Executive Secretary, DHS/FEMA, 1800 South Bell Street—CC847, Mail Stop 3025, Arlington, VA 20598-3025; telephone (202) 646-3907; fax (703) 305-0837; or e-mail timothy.greten@dhs.gov.

SUPPLEMENTARY INFORMATION: The role and functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC) are described in 44 CFR parts 351.10(a) and 351.11(a). The FRPCC is holding a public meeting on September 16, 2009, from 9 a.m. to 11 a.m., in the Large First Floor conference room in the North building of the Technology World Building Conference Facility located at 800 K St. NW., Washington, DC 20024. Please note that the meeting may close early. This meeting is open to the public. Public meeting participants must pre-register to be admitted to the meeting. To pre-register, please provide your name and telephone number by close of business on September 7, 2009, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above.

The tentative agenda for the FRPCC meeting includes: (1) Introductions, (2) reports from FRPCC Subcommittees, (3) old business and new business, and (4) business from the floor. The FRPCC Chair shall conduct the meeting in a way that will facilitate the orderly conduct of business. Reasonable provisions will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the meeting should send a written request for time by close of business on September 7, 2009, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above. Any member of the public who wishes to file a written statement with the FRPCC should provide the statement by close of business on September 7, 2009, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please write or call the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above as soon as possible.

Authority: 44 CFR 351.10(a) and 351.11(a).

Dated: July 27, 2009.

James R. Kish,

Director, Technological Hazards Division, Chair, Federal Radiological Preparedness Coordinating Committee, National Preparedness Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9-18648 Filed 8-4-09; 8:45 am]

BILLING CODE 9110-21-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2009-0676]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and a selection of its subcommittees and working groups will hold meetings to discuss various issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public. The subcommittees that will meet are

Outreach, National Fire Protection Association (NFPA) 472 Standard, Hazardous Cargo Transportation Security (HCTS), and International Maritime Solid Bulk Cargoes (IMSBC) Code. The working groups that will meet are Barge Emission and Hazard Communication, the International Convention for the Prevention of Pollution from Ships (MARPOL), and First Responders.

DATES: CTAC will meet on August 13, 2009 from 9 a.m. to 3 p.m. The Outreach subcommittee will meet on Tuesday, August 11, 2009, from 8:30 a.m. to 10:30 a.m. The MARPOL working group will meet on Tuesday, August 11, 2009, from 10:30 a.m. to 12 p.m. The NFPA 472 Standard subcommittee will meet on Tuesday, August 11, 2009, from 12:45 p.m. to 1:45 p.m. The First Responders working group will meet on Tuesday, August 11, 2009, from 1:45 p.m. to 3 p.m. The IMSBC Code subcommittee will meet on Wednesday, August 12, 2009, from 8:30 a.m. to 10 a.m. The Barge Emission and Hazard Communication working group will meet on Wednesday, August 12, 2009, from 10 a.m. to 12 p.m. The HCTS subcommittee will meet on Wednesday, August 12, 2009, from 1:15 p.m. to 4 p.m.

ADDRESSES: CTAC, its subcommittees and working groups will meet at the U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC. If interested in making presentations, please send your request to COMMANDANT (CG-5223), ATTN (CG-5223), U.S. Coast Guard, 2100 2nd St., SW., STOP 7126, Washington, DC 20593-7126. Presentations can be oral or in writing.

FOR FURTHER INFORMATION CONTACT: Commander Michael Roldan, Designated Federal Officer (DFO) of CTAC at 202-372-1420, or Ms. Sara Ju, Assistant to the DFO, at 202-372-1422, fax 202-372-1926.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92-463).

Previous Notice

A previous notice was published in the **Federal Register** on July 24, 2009, which informed the public that CTAC

and its subcommittees and working groups will meet at the U.S. Coast Guard Headquarters in August of this year, and provided agendas for those meetings (74 FR 36733). That notice complied with the requirement in 41 CFR 102-3.150 to inform the public of FACA meetings at least 15 calendar days in advance. Although the previous notice provided all other necessary information about the meetings described above, it inadvertently omitted the date and time of the CTAC meeting and this notice corrects that omission.

Dated: July 30, 2009.

J.G. Lantz,
Director of Commercial Regulations and Standards.
 [FR Doc. E9-18630 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5228-FA-01]

Announcement of Funding Awards for the Rental Assistance for Non-Elderly Persons With Disabilities in Support of Designated Housing Plans for Fiscal Year 2008

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the FY 2008 Notice of Funding Availability (NOFA) for the Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans program funding for Fiscal Year 2008. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on guidelines established in the NOFA.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY 2008 Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans program awards, contact the Office of Public and

Indian Housing's Grant Management Center, Acting Director, Keia L. Neal, Department of Housing and Urban Development, Washington, DC, telephone (202) 475-8908. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877-8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The authority for the \$15,000,000 in one-year budget authority for the Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans program is found in the Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2008 (Pub. L. 110-161). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended.

The purpose of the Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans program is to provide vouchers to non-elderly disabled families that would have been housed by a PHA if occupancy in the designated public housing project/building (or portion thereof) were not restricted to elderly households. The vouchers will enable non-elderly disabled families to access affordable private housing.

The Fiscal Year 2008 awards announced in this Notice were selected for funding in a competition announced in the **Federal Register** NOFA published on November 28, 2008. In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the fourteen (14) awards made under the Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans program competition.

Dated: July 29, 2009.

Sandra B. Henriquez,
Assistant Secretary for Public and Indian Housing, P.

Recipient	Address/City/State/Zip code	Amount	Vouchers
Sacramento County Housing Authority	630 I Street, Sacramento, CA 95814	\$878,784	100
Housing Authority of the City of Orlando, FL	390 North Bumby Avenue, Orlando, FL 32803	\$740,124	100
City of Des Moines Municipal Housing Agency	100 East Euclid Avenue, Suite 101, Des Moines, IA 50313.	\$251,907	53
Chicago Housing Authority	60 East Van Buren Street, Chicago, IL 60605	\$948,012	100
Housing Authority of Joliet	6 South Broadway Street, Joliet, IL 60436	\$222,269	45

Recipient	Address/City/State/Zip code	Amount	Vouchers
Housing Authority of the County of Cook	175 West Jackson Boulevard, Suite 350, Chicago, IL 60604.	\$981,732	100
Topeka Housing Authority	2010 South East California Avenue, Topeka, KS 66607	\$298,539	75
Cambridge Housing Authority	675 Mass Avenue, Cambridge, MA, 02139	\$1,477,092	100
Framingham Housing Authority	1 John J. Brady Drive, Framingham, MA 01702	\$945,983	90
Housing Opportunities Commission of Montgomery County, MD.	10400 Detrick Avenue, Kensington, MD 20895	\$1,229,004	100
Housing Authority of the County of Butler	114 Woody Drive, Butler, PA 16001	\$274,608	50
Town of Cumberland Housing Authority	573 Mendon Road Suite #4, Cumberland, RI 02864	\$228,107	29
Town of North Providence Housing Authority	945 Charles Street, North Providence, RI 02904	\$188,544	25
King County Housing Authority	600 Andover Park West, Tukwila, WA 98188	\$868,128	100

[FR Doc. E9-18624 Filed 8-4-09; 8:45 am]
 BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-12022, AA-12023, AA-12024, AA-12025, AA-12026, AA-12029, AA-12030, AA-12031, AA-12032, AA-12033, AA-12036, AA-12037, AA-12038, AA-12041, AA-12042, AA-12043, AA-12044, AA-12045, AA-12046, AA-12047, AA-12048, AA-12049, AA-12050, AA-12051, AA-12052, AA-12053, AA-12054, AA-12055, AA-12056, AA-12059, AA-12060, AA-12061, AA-12062, AA-12063, AA-12064, AA-12065, AA-12066, AA-12067, AA-12068, AA-12069, AA-12070, AA-12072, AA-12073, AA-12074, AA-12075, AA-12076, AA-12077; AK-962-1410-HY-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface estate only for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to The Aleut Corporation for 854.05 acres located on the Andreev Islands west of Adak, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:
 1. Any party claiming a property interest which is adversely affected by the decision shall have until September 4, 2009 to file an appeal.
 2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land

Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,
Land Transfer Resolution Specialist,
Resolution Branch.

[FR Doc. E9-18710 Filed 8-4-09; 8:45 am]
 BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-9477; AK-962-1410-HY-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for 2.83 acres located northwesterly of the Native village of Goodnews Bay, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:
 1. Any party claiming a property interest which is adversely affected by the decision shall have until September 4, 2009 to file an appeal.
 2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,
Land Transfer Resolution Specialist,
Resolution Branch.

[FR Doc. E9-18712 Filed 8-4-09; 8:45 am]
 BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14848-A, F-14848-A2; LLA965000-L14100000-KC0000-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chefarmute Incorporated. The lands are in the vicinity of Chefnak, Alaska, and are located in:

- Lot 1, U.S. Survey No. 13364, Alaska. Containing 80.00 acres.
- U.S. Survey No. 13824, Alaska. Containing 1.81 acres.

Seward Meridian, Alaska.

- T. 6 N., R. 75 W.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 34, 35, and 36.
Containing approximately 9,960 acres.
- T. 6 N., R. 76 W.,
Sec. 2, those lands formerly within Native
allotment application F-17723.
Containing approximately 130 acres.
- T. 6 N., R. 78 W.,
Secs. 17 to 20, inclusive.
Containing approximately 2,419 acres.
- T. 6 N., R. 79 W.,
Secs. 13, 14, and 15;
Secs. 22, 23, and 24.
Containing approximately 3,625 acres.
- T. 1 N., R. 86 W.,
Sec. 18, those lands formerly within Native
allotment application F-17714, Parcel D.
Containing approximately 43 acres.
- T. 2 N., R. 86 W.,
Sec. 8;
Secs. 16 and 17.
Containing approximately 1,823 acres.
- T. 1 S., R. 86 W.,
Secs. 5, 6, 7, and 8;
Secs. 17 and 18.
Containing approximately 2,300 acres.
- T. 2 N., R. 87 W.,
Sec. 21.
Containing approximately 354 acres.
- T. 1 S., R. 87 W.,
Secs. 1, 12, and 13.
Containing approximately 769 acres.
- T. 1 N., R. 88 W.,
Secs. 1, 2, and 4;
Secs. 11 and 12.
Containing approximately 1,895 acres.
Aggregating approximately 23,401 acres.

A portion of the subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Chefarnmute Incorporated. The remaining lands lie within the Kuskokwim National Wildlife Range, renamed the Clarence Rhode National Wildlife Range, January 16, 1961. The subsurface estate in the refuge lands will be reserved to the United States at the time of conveyance. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 4, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robin Middleton,

Land Law Examiner,

Land Transfer Adjudication II Branch.

[FR Doc. E9-18713 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[AA-9346, AA-9353, AA-9361, AA-9379, AA-9880; LLAk-962000-L1410000-HY0000-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for 30.48 acres located southeasterly of the Native village of Emmonak, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 4, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from:

Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

*Land Transfer Resolution Specialist,
Resolution Branch.*

[FR Doc. E9-18714 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[F-14884-A; F-14884-A2; AK-965-1410-KC-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Kwik Incorporated. The lands are in the vicinity of Kwigillingok, Alaska, and are located in:

Seward Meridian, Alaska

- T. 1 S., R. 80 W.,
Secs. 28 to 33, inclusive.
Containing approximately 2,485 acres.
- T. 1 S., R. 81 W.,
Secs. 5 to 8 inclusive;
Secs. 16 to 36, inclusive.
Containing approximately 13,373 acres.
- T. 1 S., R. 82 W.,
Secs. 1 to 36, inclusive.
Containing approximately 17,760 acres.
- T. 2 S., R. 82 W.,
Secs. 1, 5, 6, 7, and 12;
Secs. 18 to 21, inclusive;
Secs. 28 to 35, inclusive.
Containing approximately 5,727 acres.
- T. 3 S., R. 82 W.,
Secs. 3 to 14, inclusive.
Containing approximately 3,896 acres.
- T. 1 S., R. 83 W.,
Secs. 31 to 36, inclusive.
Containing approximately 3,793 acres.
- T. 2 S., R. 83 W.,
Secs. 1 to 28, inclusive.
Containing approximately 11,093 acres.
Aggregating approximately 58,126 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation

when the surface estate is conveyed to Kwik Incorporated. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 4, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Suzette Claypool,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. E9-18711 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-9526, AA-10173, AA-10205, AA-10211, AA-11471, AA-10222, AA-10224, AA-10273, AA-10278, AA-10381, AA-11412, AA-10383, AA-11665; LLA-962000-L14100000-HY0000-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for 198.70 acres located northeasterly of the Native village of Akiak, Alaska, and southeasterly of the Native village of Napaskiak, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 4, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E9-18709 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-9657, AA-9676, AA-9743, AA-9811, AA-9833, AA-10034, AA-10066, AA-10319, AA-10322; AK-962-1410-HY-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface estate only for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for 55.00 acres located northeasterly of the Native village of Emmonak, Alaska, and southwesterly of the Native village of Nightmute, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until September 4, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from:

Bureau of Land Management,
Alaska State Office,
222 West Seventh Avenue, #13,
Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E9-18708 Filed 8-4-09; 8:45 am]

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BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVSO0560. L71220000. EU0000. LVRWF091620; N-81451; 9-08807; TAS: 14X8069]

Conveyance of Public Lands for a Public Heliport Facility in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Secretary of the Interior is directed by the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies' Appropriations Act of 2006, Public Law (Pub. L.) 109-115, Section 180, to convey approximately 229 acres of public land in Clark County for the Southern Nevada Regional Heliport, a public facility. The land is under the jurisdiction of the Bureau of Land Management (BLM).

DATE: Interested parties may submit written comments regarding the proposed conveyance of the land until September 21, 2009.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT:

Cheryl G. Cote (702) 515-5104.

SUPPLEMENTARY INFORMATION:

The heliport facility will lie within a corridor established by Public Law 107-282 dated November 6, 2002. The 2,640-foot wide Transportation and Utilities Corridor will be located along Interstate 15 south of Las Vegas Valley to the border between the states of California and Nevada, and will be managed for multiple uses.

The following described public land in Clark County, Nevada, has been examined and found suitable for conveyance to Clark County for airport purposes. The parcel of land is located south of Las Vegas, Nevada, approximately 3.5 miles southwest of the Sloan Road and Interstate 15 interchange and east of State Route 604, and is described as:

Mount Diablo Meridian, Nevada

T. 24 S., R. 60 E.,

Sec. 1, that portion lying east of State Route 604 as depicted as Tract A on the map entitled *Clark County Public Heliport Facility*, dated May 3, 2004.

The area described contains 229 acres, more or less.

Public Law 109-115, Section 180, directs the Secretary of the Interior to convey to Clark County, Nevada, all right, title, and interest of the United States in the parcel described, subject to valid existing rights and for no consideration. Clark County must use the parcel for the operation of a heliport. If the County ceases to use any of the land conveyed for the purpose described, title to the parcel will revert to the United States, at the option of the United States, and the County will be responsible for any reclamation necessary.

The land is not needed for any Federal purpose. The conveyance is consistent with the BLM Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest. The proposed conveyance for the Southern Nevada Regional Heliport was analyzed in the environmental analysis (EA) *Proposed Southern Nevada Regional Heliport*. This document was approved by the Federal Aviation Administration on December 9, 2008. The BLM is a cooperating agency on the preparation of the EA and will issue its own decision. A copy of the EA and the reference map are available at the Las Vegas Field Office.

Upon publication of this notice in the **Federal Register**, the land described will be segregated from all other forms of appropriation under the public land laws, including the general mining laws.

The conveyance, when issued, will be subject to:

1. Valid existing rights;
2. Right-of-way N-7100 for oil and gas pipeline purposes granted to CalNev Pipeline Co., its successors and assigns, pursuant to the Act of Feb. 20, 1920, as amended (30 U.S.C. 185);
3. Right-of-way N-43923 for fiber optic line purposes granted to MCI WorldCom, its successors and assigns, pursuant to the Act of Oct. 21, 1976 (43 U.S.C. 1761);
4. Right-of-way N-47888 for fiber optic line purposes granted to Sprint Communications, its successors and assigns, pursuant to the Act of Oct. 21, 1976 (43 U.S.C. 1761);
5. Right-of-way N-48572 for fiber optic line purposes granted to AT&T, its successors and assigns, pursuant to the Act of Oct. 21, 1976 (43 U.S.C. 1761);
6. Right-of-way N-56213 for oil and gas pipeline purposes granted to CalNev Pipeline Co., its successors and assigns, pursuant to the Act of Feb. 20, 1920, as amended (30 U.S.C. 185);
7. Permit N-85582 for soil testing purposes authorized to Clark County Department of Aviation, its successors and assigns, pursuant to the Act of Oct. 21, 1976 (43 U.S.C. 1761).

8. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the property.

9. To the extent required by law, the conveyance will be subject to the requirements on section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(h)).

Interested parties may submit written comments regarding whether the BLM followed proper administrative procedures as directed by Public Law 109-115, Section 180. Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field

Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed. In the absence of any adverse comments, the decision will become effective on October 5, 2009. The lands will not be available for conveyance until after the decision becomes effective.

Authority: Public Law 109-115, Section 180.

Kimber Liebhauser,

Assistant Field Manager, Lands, Las Vegas Field Office.

[FR Doc. E9-18718 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR**National Park Service****Fishery Management Plan, Draft Environmental Impact Statement, Biscayne National Park, FL**

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Draft Environmental Impact Statement for the Fishery Management Plan, Biscayne National Park.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Draft Environmental Impact Statement (DEIS) for the Fishery Management Plan (FMP) for Biscayne National Park, Florida.

DATES: The NPS will accept comments on the DEIS from the public for 60 days from the date the Environmental Protection Agency notices the availability of the DEIS in its regular Friday **Federal Register** listing. Public meetings will be held during the review period to facilitate submission of public comment. Once scheduled, meeting dates will be announced via (1) park mailings, (2) the park's website (<http://www.nps.gov/bisc/>), (3) a press release to area media, and (4) announcements in area newspapers.

ADDRESSES: Information will be available for public review and comment online at the NPS Planning, Environment and Public Comment site (<http://parkplanning.nps.gov/>), and in the office of Mark Lewis, Superintendent of Biscayne National Park, 9700 SW. 328th Street, Homestead, Florida 33033.

SUPPLEMENTARY INFORMATION: In response to a variety of scientific data sources that indicated declining fisheries resources in Biscayne National Park, the NPS held public and

stakeholder meetings and consulting party meetings to gather advice and feedback on the current status of the park's fisheries resources and the desired outcomes for the future management of fisheries resources in Biscayne National Park. The State of Florida's Fish and Wildlife Conservation Commission (FWS) is serving as a cooperating agency. The NPS also received recommendations from a working group formed under the authority of the Florida Keys National Marine Sanctuary Advisory Council. The NPS coordinated with representatives of State and Federal agencies and local universities to examine current scientific data on fisheries resources in Biscayne National Park. The outcomes of the public meetings, working group meetings, and inter-agency meetings were collectively incorporated into the development of alternatives for the DEIS for the FMP and the selection of the NPS's preferred alternative.

The range of alternatives identified in the DEIS for the FMP includes actions that could reasonably be implemented given the legislative and legal requirements under which the NPS operates. The No-Action Alternative, Alternative 1—Maintain Status Quo, represents no change in specific management approaches or the type of actions the NPS has taken in the past. The four action alternatives (Alternatives 2 to 5) represent progressively increasing levels of change from current regulations and management approaches, and thus would result in differing future levels of fishery resources and gear-related habitat impacts in Biscayne National Park. Each alternative is summarized below.

Alternative 1, Maintain Status Quo: The No-Action Alternative serves as a basis of comparison with the other alternatives. Alternative 1 is characterized by the continuation of current fisheries management according to the park's enabling legislation, the established NPS management policies and existing authorities, and in conjunction with State fishery regulations. No regulatory changes would be triggered by the establishment of the FMP. Regulatory changes would occur only if mandated by the State of Florida FWS following its normal rule-making process, or through the Federal regulatory and public review process.

Alternative 2, Maintain at or Above Current Levels: A minor change from current management strategies would occur. Management actions would be enacted (in conjunction with the State of Florida FWS) to maintain Biscayne

National Park's fisheries resources at or above currently existing levels. As needed, management actions would be implemented (in conjunction with the State of Florida FWS) and could include moderate increases in minimum harvest sizes, moderate decreases in bag limits, and seasonal and/or spatial closures. Numbers of commercial fishers would remain at current levels or decrease over time, and fishing-related habitat impacts would be reduced. Additional park-specific regulations and management actions would be enacted to maintain current levels only if levels of fish stocks or recreational fishing experience decline, or if fishing-related habitat impacts increase.

Alternative 3, Improve Over Current Levels: A moderate change from current management strategies would seek a balance between enjoyment, extraction, and conservation of fishery resources. Management actions would be enacted (in conjunction with the State of Florida FWS) to increase the abundance and average size of fishery-targeted species within the park by at least 10 percent over existing conditions. A range of management actions to achieve the desired resource status would be considered, and include moderate increases in minimum harvest sizes, moderate decreases in bag limits, and seasonal and/or spatial closures. Under this alternative, lobster mini-season would be eliminated in the park and regulations would be enacted to prohibit the use of an air supply or gear with a trigger mechanism while spearfishing. Numbers of commercial fishers would remain at current levels or decrease over time, and fishing-related habitat impacts would be reduced. Under this and all subsequent alternatives, the park would require a recreational use permit for all boats engaged in any recreational activity (such as fishing or diving); the permit would not be required for boaters passing through, but not recreating in, the park (e.g. traveling the Intracoastal Waterway). This alternative would require implementation of new regulations governing fishing activities within the park that would be accomplished through collaboration with State of Florida FWS and further public input.

Alternative 4, Rebuild and Conserve Park Fisheries Resources: A considerable change from current management strategies would seek a balance between enjoyment, extraction, and conservation of fishery resources, while ensuring sustainable fishing activities. Management actions would be enacted (in conjunction with the State of Florida FWS) to increase the abundance and average size of fishery-

targeted species within the park by at least 20 percent over existing conditions, as well as to reduce fishing-related habitat impacts. Possible management actions to achieve substantial improvement of fisheries resources could include considerable increases in minimum size limits, designation of slot limits, substantial decreases in bag limits, and seasonal and/or spatial closures. Under Alternative 4, lobster mini-season would be eliminated in the park and regulations would be enacted to prohibit the use of an air supply or gear with a trigger mechanism while spearfishing. Numbers of commercial fishers would decrease over time via establishment of a non-transferable permit system. As in Alternative 3, the park would require a recreational use permit for all boats engaged in any recreational activity (such as fishing or diving); the permit would not be required for boaters passing through, but not recreating in, the park (e.g., traveling the Intracoastal Waterway). This alternative would require considerable changes to current fishing regulations within the park, and would be accomplished through collaboration with State of Florida FWS and further public input.

Alternative 5, Restore Park Fisheries Resources: This would require substantial changes from current management strategies in order to return the sizes and abundance of targeted species to within 20 percent of their estimated, historic (pre-exploitation) levels and to prevent further decline in fishing-related habitat impacts. Possible management actions to achieve the desired conditions would be enacted in conjunction with the State of Florida FWS and could include substantial increases in minimum size limits, designation of slot limits, substantial decreases in bag limits, seasonal and/or spatial closures, prohibition of extractive fishing (i.e. only allowing catch-and-release fishing), and a temporary moratorium on all fishing activity within the park. Under this alternative, lobster mini-season would be eliminated in the park and regulations would be enacted to prohibit spearfishing within the park. Numbers of commercial fishers would decrease over time via establishment of a non-transferable permit system. As in Alternatives 3 and 4, the park would require a recreational use permit for all boats engaged in any recreational activity (such as fishing or diving); the permit would not be required for boaters passing through, but no recreating in, the park (e.g., traveling the Intracoastal Waterway). Among the five alternatives,

this alternative would require the most extreme changes to current fishing regulations within the park, and the changes to the park's fishing regulations would be accomplished through collaboration with the State of Florida FWS and further public input.

Alternative 4, Rebuild and Conserve Park Fisheries Resources, has been identified as the NPS's "preferred alternative" because it results in the most equitable balance between protection, enjoyment, and extraction of the park's fisheries resources. The NPS believes that Alternative 4 will allow for fishing activities to continue at a sustainable level that does not compromise the long-term health of the park's fisheries resources. Additionally, following NEPA, the NPS has identified Alternative 5, Restore Park Fisheries Resources, as the "environmentally preferred alternative" because it causes the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural, and natural resources. Through identification of the "environmentally preferred alternative," NPS decision-makers and the public are faced with the relative merits of each alternative and must clearly state the values and policies used throughout the decision-making process.

If you wish to comment on the FMP, you may submit your comments by any one of several methods. You may mail comments to Fishery Management Plan, Biscayne National Park, 9700 SW. 328th Street, Homestead, Florida 33033. You may also comment via the Internet at <http://parkplanning.nps.gov>. If you do not receive a confirmation from the system that we have received your Internet message, contact BISC Fisheries at 305-230-1144. Finally, you may hand-deliver comments to Biscayne National Park, 9700 SW. 328th Street, Homestead, Florida 33033. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Biscayne National Park, 9700 SW. 328th Street, Homestead, Florida 33033; Telephone 305-230-1144; or BISC Fisheries@nps.gov.

The authority for publishing this notice is contained in 40 CFR 1506.6

The responsible official for this Draft EIS is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Art Frederick,

Acting Regional Director, Southeast Region.

[FR Doc. E9-18754 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTY0100-09-L1220000.EB0000-24-1A00]

Notice of Intent To Collect Fees on Public Land in Grand County, Utah, Moab Field Office Under the Federal Lands Recreation Enhancement Act (REA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (REA), the Moab Field Office of the Bureau of Land Management (BLM) is proposing to begin collecting fees for one group site and three camping areas. These proposed sites are located in Grand County, Utah.

DATES: *Effective Date:* There will be a 30 day public comment period that will expire on September 4, 2009. The public is urged to participate in the public comment period. Effective six months after the publication of this notice, the Bureau of Land Management, Moab Field Office would initiate fee collection at the Moab Skyway Group Area, and the Entrada Bluffs, Bartlett Wash and Courthouse Rock camping areas, as construction work is completed, unless BLM publishes a **Federal Register** notice to the contrary. The Utah Resource Advisory Council (RAC), functioning as a Recreation Resource Advisory Committee (RRAC), will review the proposal to charge fees at the sites mentioned above. Future adjustments in the fee amount will be made in accordance with the Moab Field Office's recreation fee business plan covering the sites. Fee adjustments will be made after consultation with the Utah Recreation Resource Advisory Committee and other appropriate advance public notice.

ADDRESSES: Mail: Field Manager, Moab Field Office, 82 East Dogwood, Moab, UT 84532 or momail@ut.blm.gov.

FOR FURTHER INFORMATION CONTACT: Russell von Koch, Recreation Branch

Chief, Moab Field Office, Bureau of Land Management, 82 East Dogwood, Moab, UT 84532 (435) 259-2100.

SUPPLEMENTARY INFORMATION: The group site and three camping areas are: Moab Skyway Group Site (T. 26 S., R. 21 E., Sec. 2, within, SLM), Entrada Bluffs camping area (T. 23 S., R. 24 E., Sec. 8, within, SLM), Bartlett Wash camping area (T. 24 S., R. 19 E., Section 14, within, SLM), and Courthouse Rock camping area (T. 24 S., R. 20 E., Sections 17 and 20, within, SLM). Under Section 3(g) of the REA, the Moab Skyway Group Site, and the Entrada Bluffs, Bartlett and Courthouse Rock camping areas will qualify, upon completion, as sites wherein visitors can be charged an "Expanded Amenity Recreation Fee." Visitors wishing to use the expanded amenities BLM is developing at the four sites would purchase a recreation use permit as described at 43 CFR Part 2930. Pursuant to REA and implementing regulations at 43 CFR Subpart 2933, fees may be charged for overnight camping and group use reservations where specific amenities and services are provided. Specific visitor fees will be identified and posted at the site. Fees must be paid at the self-service pay station located at the camping areas. Fees for the Moab Skyway Group Site must be paid for in advance with the Moab Field Office. People holding the America The Beautiful—The National Parks and Federal Recreational Lands—Senior Pass (i.e., Interagency Senior Pass), a Golden Age Passport, the America the Beautiful—The National Parks and Federal Recreational Lands—Access Pass (i.e. Interagency Access Pass), or a Golden Access Passport will be entitled to a 50 percent fee reduction on all fees except those associated with group reservations. Fees charged for use of the group sites would include a non-refundable site reservation fee and a per person use fee.

The Moab Skyway Group Site and the Entrada Bluffs camping area are within the Colorado Riverway Special Recreation Management Area (SRMA). Within this SRMA, there are twelve similar camping fee sites. The Moab Skyway Group Site, which is within the Moab city limits, would include special developed facilities available for day use only. The Entrada Bluffs site has individual camp sites only. Bartlett Wash and Courthouse Rock would only have individual sites. These two areas are located within the Gemini Bridges/Labyrinth Rims Special Recreation Management Area, which has three similar camping fee sites.

The BLM is committed to provide, and receive fair value for the use of developed recreation facilities and services in a manner that meets public use demands, provides quality experiences and protects important resources. The BLM's policy is to collect fees at all specialized recreation sites, or where the BLM provides facilities, equipment or services, at Federal expense, in connection with outdoor use as authorized by the REA. In an effort to meet increasing demands for services and maintenance of developed facilities, the BLM would implement a fee program for the camping areas. BLM's mission for the camping areas is to ensure that funding is available to maintain facilities and recreational opportunities, to provide for law enforcement presence, to develop additional services, and to protect resources. This mission entails communication with those who will be most directly affected by the camping areas, for example recreationists, other recreation providers, partners, neighbors, and those who will have a stake in solving concerns that may arise throughout the life of the camping areas, including elected officials, and other agencies.

Development of the Moab Skyway Group Site and the Entrada Bluffs, Bartlett and Courthouse camping areas is consistent with the 2008 Moab Resource Management Plan and was analyzed in the Environmental Impact Statement accompanying the plan (EIS UT-060-2007-04). Camping and group use fees would be consistent with other established fee sites in the area including other BLM administered sites in the area and those managed by the USDA Forest Service, USDI National Park Service, and Utah State Parks and Recreation. Future adjustments in the fee amount will be made following the Moab Field Office's recreation fee business plan covering the sites, consultation with the Utah Recreation Resource Advisory Committee and other public notice prior to a fee adjustment.

In December 2004, the REA was signed into law. The REA provides authority for 10 years for the Secretaries of the Interior and Agriculture to establish, modify, charge, and collect recreation fees for use of some Federal recreation lands and waters, and contains specific provisions addressing public involvement in the establishment of recreation fees, including a requirement that Recreation Resource Advisory Committees or Councils have the opportunity to make recommendations regarding establishment of such fees. REA also directed the Secretaries of the Interior

and Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established under their respective jurisdictions. In accordance with the BLM recreation fee program policy, the Moab Field Office's recreation fee business plan both explains the fee collection process and how the fees will be used at the four sites. BLM will notify and involve the public at each stage of the planning process, including the proposal to collect fees. The Utah RRAC will review the fee proposals at its next meeting, following REA guidelines. Fee amounts will be posted on-site, and at the Moab Field Office, and copies of the business plan will be available at the Moab Field Office and the BLM Utah State Office.

BLM welcomes public comments on this proposal. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 6803(b).

Approved:

Selma Sierra,
State Director.

[FR Doc. E9-18720 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT91000-L10400000-PH0000-24-1A]

Notice of Utah's Resource Advisory Council (RAC) Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Utah's Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and The Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council (RAC) will meet September 15 (1 p.m.–6 p.m.) and September 16 (8 a.m.–3 p.m.), 2009, in Cedar City, Utah.

ADDRESSES: The RAC will meet at the Southern Utah University's Hunter Star

meeting room), 351 West University Blvd., Cedar City, Utah.

FOR FURTHER INFORMATION CONTACT: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145-0155; phone (801) 539-4195.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Utah. On September 15, planned agenda topics include presentations on renewable energy resources, including geothermal, wind energy, solar study units; effects on wildlife from renewable energy development; the treatment of renewable resources in Resource Management Plans; and, comments by local and state officials. Updates on the Milford Flat fire rehab project also will be presented. A half-hour public comment period, where the public may address the Council, is scheduled from 5 p.m.–5:30 p.m. Written comments may be sent to the Bureau of Land Management's address listed above.

On September 16, the RAC will tour the RASER facilities (geothermal-modular units), First Wind—Milford Flat Wind Farm (Clipper and GE turbines, substation, operation and maintenance facility, lay-down yards), and the Blundell Powerplant (geothermal, production plant-turbine, heat exchangers). All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public. For purposes of field tour coordination, members of the public wishing to attend are to contact Sherry Foot at (801) 539-4195.

Dated: July 30, 2009.

Selma Sierra,
State Director.

[FR Doc. E9-18681 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC03000-L10200000-PK0000]

Notice of Public Meeting, Dakotas Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory

Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Dakotas Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held September 2, 2009. The meeting will begin at 8 a.m. on September 2, 2009. The public comment period will begin at 1 p.m. on Wednesday, September 2, 2009.

ADDRESSES: The meeting will be held at the BLM North Dakota Field Office, 99 23rd Avenue West, Dickinson, North Dakota 58601.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North and South Dakota. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below. The Council will hear updates to ongoing planning efforts and assist in evaluating areas of ecological importance.

FOR FURTHER INFORMATION CONTACT: Lonny Bagley, Field Manager, North Dakota Field Office, 99 23rd Avenue West, Dickinson, North Dakota 701.227.7700, or Marian Atkins, Field Manager, South Dakota Field Office, 310 Roundup St., Belle Fourche, South Dakota, 605.892.7000.

Dated: July 30, 2009.

Lonny R. Bagley,
Field Manager.

[FR Doc. E9-18700 Filed 8-4-09; 8:45 am]

BILLING CODE 4310--SS-P

DEPARTMENT OF THE INTERIOR

Geological Survey

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on August 26-27, 2009 at the National Conservation Training Center, 698

Conservation Way, Shepherdstown, WV 25443. The meeting will be held in Room #161 Instructional West.

The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, has been established to advise the Chair of the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A-16. Topics to be addressed at the meeting include:

- Recent FGDC Activities;
- National Geospatial Policy and Strategy;
- Planning for a Geospatial Open Forum;
- Geospatial Partnerships;
- Change Detection;
- NGAC Subcommittee Reports.

The meeting will include an opportunity for public comment during the morning of August 27. Comments may also be submitted to the NGAC in writing.

Members of the public who wish to attend the meeting must register in advance for clearance into the meeting site. Please register by contacting Arista Maher at the Federal Geographic Data Committee (703-648-6283, amaher@fgdc.gov). Registrations are due by August 19. While the meeting will be open to the public, seating may be limited due to room capacity.

Members of the public who cannot attend in person may listen to the meeting via conference call. Please register in advance for the conference call by contacting Arista Maher at the Federal Geographic Data Committee (703-648-6283, amaher@fgdc.gov). Conference call registrations are due by August 19. Instructions will be provided. The number of participants may be limited by conference line capacity.

DATES: The meeting will be held on August 26 from 8:30 a.m. to 5 p.m. and on August 27 from 8:30 a.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206-220-4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting are available at <http://www.fgdc.gov/ngac>.

Dated: July 30, 2009.

Ivan DeLoatch,

Staff Director, Federal Geographic Data Committee.

[FR Doc. E9-18735 Filed 8-4-09; 8:45 am]

BILLING CODE 4311-AM-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-930-1310-FI; ARES 52370]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Arkansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of Public Law 97-451, the Bureau of Land Management-Eastern States (BLM-ES) received a petition for reinstatement of oil and gas lease ARES 52370 from SEECO, Inc. for lands in Polk County, Arkansas. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Robyn Shoop, Supervisory Land Law Examiner, BLM-ES, 7450 Boston Boulevard, Springfield, Virginia, at (703) 440-1512.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting these lands. The lessee has agreed to the new lease terms for rental and royalties at rates of \$5.00 per acre or fraction thereof, per year, and 16 $\frac{2}{3}$ percent, respectively. The lessee has paid the required \$500.00 administrative fee and \$163.00 to reimburse the BLM for the cost of publishing this Notice in the **Federal Register**. The lessee has met all the requirements for reinstatement as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate the lease effective December 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robyn Shoop,

Supervisory, Land Law Examiner, Division of Natural Resources.

[FR Doc. E9-18715 Filed 8-4-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[LLCON03000-L12200000-PA0000]

Notice of Proposed Supplementary Rules for Public Lands in Colorado: North Fruita Desert Management Area**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Proposed supplementary rules.

SUMMARY: The Bureau of Land Management's (BLM) Grand Junction Field Office is proposing supplementary rules to regulate conduct on public lands within the North Fruita Desert Management Area (NFDMA). These supplementary rules are needed to implement decisions described in the North Fruita Desert Management Plan (NFDMP), to protect public lands, resources, public health, and provide for public safety.

DATES: Please send comments to the following address by October 5, 2009. Comments received or postmarked after this date may not be considered in the development of the final supplementary rules.

ADDRESSES: Please mail comments to Chris Ham, North Fruita Desert Management Area, 2815 H Road, Grand Junction, Colorado 81506; or e-mail comments to gjfo_webmail@blm.gov, Attn: "North Fruita."

FOR FURTHER INFORMATION CONTACT: Eric Boik, BLM Field Staff Law Enforcement Ranger, 970-244-3070, e-mail: Eric_Boik@blm.gov or Chris Ham, Recreation Program Lead, 970-244-3031, e-mail: Chris_Ham@blm.gov.

SUPPLEMENTARY INFORMATION:**I. Public Comment Procedures**

Written comments on the proposed supplementary rules should be specific, be confined to issues pertinent to the proposed supplementary rules, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment is addressing. The BLM is not obligated to consider or include in the Administrative Record for the supplementary rules, comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than the address listed above (see **ADDRESSES**). Comments, including names, street addresses, and other contact information of respondents, will be available for public review at 2815 H

Road, Grand Junction, Colorado 81506, during regular business hours (7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

Recreation resource management decisions for the Grand Junction Field Office (GJFO) were detailed in the Grand Junction Resource Area (GJRA) Resource Management Plan (RMP) in 1987. The Grand Valley, including the North Fruita Desert, was designated as an Intensive Recreation Management Area (IRMA) in the RMP plan. The plan identified the need for additional planning for the IRMA due to its distinguishing characteristics and significance to recreation. The North Fruita Desert Management Plan fulfills the obligation of the GJFO to complete a site-specific recreation plan for this area. It establishes management objectives and identifies management strategies to achieve those objectives. The North Fruita Desert Management Plan amends the GJRA RMP, implements the Environmental Assessment (EA) and its amendments, and supports BLM policies. The North Fruita Desert Management Plan is an integrated, issue-driven recreation plan because it addresses all major resource disciplines present in the area and the issues associated with them. It is also consistent with direction for recreation actions found in the Recreation Guidelines to meet Public Land Health Standards on BLM Managed Lands in Colorado (2000), as well as the BLM National Mountain Bike Strategy, the BLM Off-Highway Vehicle (OHV) Strategy and the BLM Priorities for Recreation and Visitor Services. These three documents may be viewed at <http://www.blm.gov>.

III. Discussion of the Proposed Supplementary Rules

The proposed supplementary rules apply to the public lands within the North Fruita Desert Management Area (NFDMA). The North Fruita Desert Management Plan, a plan which amends the 1987 RMP within the North Fruita Desert Planning Area includes specific management actions that restrict certain

activities and define allowable uses. The proposed supplementary rules implement these management actions within the NFDMA. These rules do not propose or implement any land use limitations or restrictions other than those limitations or restrictions included within the decisions in the RMP or allowed for by existing law or regulation. Many of the proposed supplementary rules apply to the entire area, but some apply to specific areas within the NFDMA. This approach allows for flexibility in management actions based on the results of resource and visitor monitoring.

IV. Procedural Matters*Executive Order 12866, Regulatory Planning and Review*

The supplementary rules do not comprise a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The supplementary rules will not have an annual effect of \$100 million or more on the economy. They will not 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. The supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise any novel legal or policy issues. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rules clearly stated?
2. Do the supplementary rules contain technical language or jargon that interferes with their clarity?
3. Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
4. Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding

the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The Management Plan and Final Environmental Assessment (EA) for the NFDMA were completed and the Record of Decision signed in August 2004. The supplementary rules are consistent with and necessary to properly carry out the direction of the RMP and the North Fruita Desert Management Plan. They establish rules of conduct for public use within NFDMA to protect public health and safety and improve the protection of the resources.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely establish rules of conduct for public use of a limited area of public lands. Therefore, the BLM has determined under the RFA that the supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The supplementary rules are not considered a “major rule” as defined under 5 U.S.C. 804(2). The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

The supplementary rules do not impose an unfunded mandate on state, local, or tribal governments in the aggregate, or the private sector of more than \$100 million per year; nor do they have a significant or unique effect on small governments. The rules have no effect on governmental or tribal entities and would impose no requirements on any of these entities. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required

to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules do not have significant takings implications, nor are they capable of interfering with Constitutionally-protected property rights. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect anyone’s property rights. Therefore, the BLM has determined that these rules will not cause a taking of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

These supplementary rules will not have a substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. These supplementary rules do not come into conflict with any state law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, these supplementary rules will not unduly burden the judicial system and they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these supplementary rules do not include policies that have tribal implications. The supplementary rules do not affect land held for the benefit, nor impede the rights of Indians or Alaska Natives.

Paperwork Reduction Act

The proposed supplementary rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecutions conducted under these proposed

supplementary rules is exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1).

Author

The principal author of these proposed supplementary rules is Eric Boik, BLM Field Staff Law Enforcement Ranger, McInnis Canyons National Conservation Area, 2815 H Road, Grand Junction, Colorado 81506.

For the reasons stated in the preamble and under the authorities for supplementary rules found under 43 U.S.C. 1740 and 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management, proposes supplementary rules for public lands managed by the BLM in Colorado, to read as follows:

Supplementary Rules for North Fruita Desert Management Area

1. These supplementary rules apply, except as specifically exempted, to activities in the North Fruita Desert Management Area (NFDMA), which is comprised of public lands administered by the Bureau of Land Management near Grand Junction, Colorado.

2. These supplementary rules are in effect on a year-round basis and will remain in effect until modified by the authorized officer.

3. You must not start or maintain a fire outside of a metal fire ring at sites or areas where fire rings are provided by the BLM. Mechanical stoves and other appliances that are fueled by gas, and equipped with a valve that allows the operator to control the flame, are among the devices that fulfill the requirement for a metal fire ring.

4. You must not start or maintain a fire in sites or areas not designated as open for such use by a BLM sign or map.

5. You must not cut or collect live, dead, or down wood except in areas designated as open to such use by a BLM sign or map.

6. You must not use roads and/or trails by motorized or mechanized vehicle or equestrian or pedestrian travel except when designated as open to such use by a BLM sign or map.

7. You must not discharge a firearm of any kind, including those used for target shooting or paintball as indicated by a BLM sign or map. Licensed hunters in legitimate pursuit of game during the proper season with appropriate firearms, as defined by the Colorado Division of Wildlife, are exempt from this rule.

8. The hours of operation are sunrise to sunset in any area that is for day-use only as indicated by a BLM sign or map. You must not enter or remain in such an area after sunset or before sunrise.

9. You must not enter an area that is designated as closed by a BLM sign or map.

10. You must not camp in sites or areas not designated as open to camping by a BLM sign or map.

11. You must not burn material, including wood that contains nails, glass or any metal.

12. You must not park in areas not designated for parking by a BLM sign or map.

13. You must not bring any dog into the NFDMA that is not controlled by visual, audible, or physical means.

14. You must remove and properly dispose of canine solid waste when indicated by a BLM sign or map.

15. You must dispose of solid human waste as indicated by a BLM sign or map.

Exemptions: Persons who are exempt from the restrictions contained in these Rules include:

A. Federal, state, local and/or military personnel in the scope of their official duties;

B. Members of any organized rescue or fire-fighting force in performance of their official duties; and

C. Persons, agencies, municipalities, or companies holding an existing special use permit inside the NFDMA and operating within the scope of their permit.

Penalties: Any person who violates any of the supplementary rules may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0-7. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571. In accordance with 43 CFR 8365.1-7, State or local officials may also impose penalties for violations of Colorado law.

Dave Hunsaker,

Associate State Director.

[FR Doc. E9-18723 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVWO3500.L17000000.PA0000; 09-08807; TAS: 14X1109]

Notice of Temporary Closures and Prohibitions of Certain Activities on Public Lands in Pershing County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: Certain lands located in northwestern Nevada partly within the

Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area (NCA) will be temporarily closed or restricted and certain activities will be temporarily prohibited in and around the Burning Man event site administered by the Bureau of Land Management (BLM) Winnemucca District. The specified closures, restrictions and prohibitions are made in the interest of public safety at and around the event. The 2006 Decision Record and associated Environmental Assessment (EA) authorized issuance of a five-year permit to Black Rock City LLC (BRC LLC) to conduct the event on public lands within the NCA. The authorization for 2009 represents year four of the permit.

DATES: August 3, 2009 to September 18, 2009.

FOR FURTHER INFORMATION CONTACT:

Dave Hays, Field Manager, Bureau of Land Management, Black Rock Field Office, Winnemucca District, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445-2921, telephone: (775) 623-1500.

SUPPLEMENTARY INFORMATION: Issues raised during public scoping for the EA included public health, socioeconomic, event management, and playa access/conditions. The EA analyzed a full spectrum of resources including, but not limited to, recreation, wildlife, air quality, solid waste and hazardous waste. Cumulative effects of the proposed action were also fully analyzed in the EA. An annual review of the permit, BRC LLC operations plan, closure orders, and special stipulations is done prior to issuance of an annual operations authorization.

Two areas are proposed for temporary closures during portions of August and September 2009. The smaller of the two areas, the Event Closure Area, is described in Section I of this notice and includes about 2,550 acres that will be subject to additional restrictions. During the 48-day period from August 3 through September 18 this area will be closed to public camping, public use, possession of weapons, possession of fireworks, building of fires on the ground, waste water discharge and other restrictions. The second and larger area is the Public Closure Area as described in Section II of this notice and encompasses about 6,200 acres. This area will be closed to camping and discharge of weapons during the same 48-day period. Additional restrictions including public use and aircraft landing will apply during an 11-day period that corresponds to the actual event which is August 31 through September 7, 2009.

I. The 2009 Event Area is within the following legally described locations:

Mount Diablo Meridian, Nevada

Unsurveyed T. 33 N., R. 24 E.,

Sec. 1, portion within event perimeter fence and 50 yards outside the fence;

Sec. 2, portion within event perimeter fence, 50 yards outside the fence and the aircraft parking area;

Sec. 3, portion within event perimeter fence, 50 yards outside the fence and within 50 yards of the event entrance road;

Secs. 4 and 5, portions within 50 yards of the event entrance road.

Unsurveyed T. 33½ N., R. 24 E.,

Sec. 25, portion within event perimeter fence and 50 yards outside the fence;

Sec. 26;

Secs. 27 and 34, portions within event perimeter fence and 50 yards outside the fence;

Sec. 35;

Sec. 36, portion within event perimeter fence and 50 yards outside the fence.

Unsurveyed T. 34 N., R. 24 E.,

Secs. 34, 35 and 36, portions within event perimeter fence and 50 yards outside the fence.

The area described contains 2,550 acres, more or less.

Between August 3, 2008 and September 18, 2009 inclusive the following restrictions and provisions apply:

A. Aircraft Landing

Aircraft as defined in Title 18, United States Code, section 31(a)(1) and includes lighter-than-air craft, ultra-light craft, and remotely controlled powered craft are prohibited from landing, taking off, or taxiing. The following exceptions apply:

1. Aircraft operations conducted through the authorized event landing strip and such ultra-light and helicopter take-off and landing areas designated for Burning Man event staff and participants, law enforcement, and emergency medical services.

2. Helicopters providing emergency medical services may land in other locations when required for medical incidents.

3. Landings or take-offs of lighter-than-air craft previously approved by the BLM authorized officer.

B. Alcohol

1. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion is prohibited.

2. Possession of alcohol by minors.

(a) The following are prohibited:

(1) Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.

(2) Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

(b) This section does not apply to the selling, handling, serving or transporting of alcoholic beverages by a person in the course of his lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

3. Operation of a motor vehicle while under the influence.

(a) Title 43 CFR 8341.1(f)3 prohibits the operation of an off-road motor vehicle on public land while under the influence of alcohol, narcotics, or dangerous drugs.

(b) In addition to the prohibition found in 43 CFR 8341.1(f)3, it is prohibited for any person to operate or be in actual physical control of a motor vehicle while:

(1) The operator is under the combined influence of alcohol, a drug, or drugs to a degree that renders the operator incapable of safe operation of that vehicle; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath.

(c) Tests.

(1) At the request or direction of any law enforcement officer authorized by the Department of the Interior to enforce this regulation, who has probable cause to believe that an operator of a motor vehicle has violated a provision of paragraph (a) or (b) of this section, the operator shall submit to one or more tests of the blood, breath, saliva, or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) Presumptive levels.

(1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (b)(2) of this

section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

4. Definitions:

(a) Open container: any bottle, can, or other container which contains an alcoholic beverage, if that container does not have a closed top or lid for which the seal has not been broken. If the container has been opened one or more times, and the lid or top has been replaced, that container is an open container.

(b) Possession of an open container: includes any open container which is physically possessed by the driver or operator, or which is adjacent to and reachable by, that driver or operator. This includes but is not limited to containers in a cup holder or rack adjacent to the driver or operator, containers on a vehicle floor next to the driver or operator, and containers on a seat or console area next to a driver or operator.

C. Drug Paraphernalia

1. The possession of drug paraphernalia is prohibited.

2. Definition:

(a) Drug paraphernalia means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of any state or federal law, or regulation issued pursuant to law.

D. Eviction of Persons

1. The Event Closure Area is closed to any person who:

(a) Has been evicted from the event by the permit holder, Black Rock City LLC, whether or not such eviction was requested by BLM.

(b) Has been ordered by a BLM law enforcement officer to leave the area of the permitted event.

2. Any person evicted from the event forfeits any privileges to be present within the perimeter fence or anywhere else within the event area even if they possess a ticket to attend the event.

E. Fires

The ignition of fires on the surface of the Black Rock Playa without a burn blanket or burn pan is prohibited.

F. Fireworks

The use, sale or possession of personal fireworks is prohibited except for uses of fireworks approved by BRC LLC and used as part of a Burning Man sanctioned art burn event.

G. Motor Vehicles

1. Motor vehicle use is prohibited, except as provided below.

(a) Motor vehicles may be operated within the event area under these circumstances:

(1) Participant arrival and departure on designated routes;

(2) Vehicles operated by BRC LLC staff and displaying appropriate current staff identification;

(3) BLM, medical, law enforcement, and firefighting vehicles;

(4) Mutant vehicles, art cars, or other vehicles registered with the Burning Man event organizers and operated within the scope of that registration. Such vehicles must display evidence of registration at all times in such manner that it is visible to the rear of the vehicle while it is in motion;

(5) Motorized skateboards or Go-Peds with or without handlebars.

2. Definitions:

(a) A motor vehicle is any device designed for and capable of travel over land and which is self-propelled by a motor, but does not include any vehicle operated on rails or any motorized wheelchair.

(b) Motorized wheelchair means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion.

H. Public Camping

Public camping is prohibited. Burning Man event ticket holders who are camped in designated areas provided by BRC LLC and ticket holders who are camped in the authorized "pilot camp" and BLM-authorized event management-related camps are exempt from the camping closure. BRC LLC authorized staff, contractors, and other authorized participants are exempt from the camping closure.

I. Public Use

No person shall be present within the event area unless that person: Possesses a valid ticket to attend the event; is an employee or authorized volunteer with the BLM, a law enforcement agency, emergency medical service provider, fire protection provider, or another public agency working at the event and

the employee is assigned to the event; or is a person working at or attending the event on behalf of the event organizers, BRC LLC.

J. Waste Water Discharge

The dumping or discharge to the ground of gray water is prohibited. Gray water is water used for cooking, washing, dishwashing, or bathing and which contains soap, detergent, food scraps, or food residue.

K. Weapons

1. Weapons.

(a) The possession of any weapon is prohibited;

(b) The discharge of any weapon is prohibited;

(c) The prohibitions above shall not apply to county, state, tribal and federal law enforcement personnel, or any person authorized by federal law to possess a weapon. Additionally "art projects" that include weapons and are sanctioned by BRC LLC will be permitted after obtaining authorization from the BLM authorized officer.

2. Definitions:

(a) Weapon means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, cross bow, blowgun, spear gun, hand thrown spear, sling shot, irritant gas device, electric stunning or immobilization device, explosive device, any implement designed to expel a projectile, switch blade knife, any blade with a sharpened or cutting edge and which is greater than 12 inches in length from the tip of the blade to the edge of the hilt or finger guard nearest the blade (e.g., swords, dirks, daggers, machetes), or any other weapon the possession of which is prohibited by state law.

(b) Firearm means any pistol, revolver, rifle, shotgun, or other device which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

(c) Discharge means the expelling of a projectile from a weapon.

II. The Public Closure Area is within the following legally described locations:

Mount Diablo Meridian, Nevada

Unsurveyed T. 33 N., R. 24 E.,

Secs. 1 and 2, portions west of the east playa road and outside the Event Area;

Sec. 3, portion outside the Event Area;

Sec. 4, portion east of Washoe Co. Rd. 34 and outside the Event Area;

Sec. 5, portion of the E $\frac{1}{2}$ that is east of Washoe Co. Rd. 34 and outside the Event Area;

Sec. 8, NE $\frac{1}{4}$;

Sec. 9, N $\frac{1}{2}$;

Sec. 10, N $\frac{1}{2}$;

Sec. 11, portion of the N $\frac{1}{2}$ that is west of east playa road.

Unsurveyed T. 33 $\frac{1}{2}$ N., R. 24 E.,

Secs. 25 and 27, portions outside the Event Area;

Secs. 28 and 33, portions east of Washoe Co. Rd. 34;

Secs. 34 and 36, portions outside the Event Area.

Unsurveyed T. 34 N., R. 24 E.,

Sec. 33, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$;

Secs. 34, 35 & 36, portions outside the Event Area;

T. 33 N., R. 25 E.,

Sec. 4, Lots 2, 3, 4 and 5, portions west of the east playa road.

Unsurveyed T. 34 N., R. 25 E.,

Sec. 33, SW $\frac{1}{4}$.

Between August 3, 2009 and September 18, 2009 inclusive the following restrictions and provisions apply:

A. Public Camping

Public camping is prohibited.

B. Discharge of Weapons

Discharge of weapons as defined in paragraph (K)(2) of Section (I) is prohibited.

Between August 31, 2009 and September 7, 2009 inclusive the following restrictions and provisions apply:

A. Aircraft Landing

Aircraft are prohibited from landing, taking off, or taxiing except as described in paragraph (A) of Section I.

B. Eviction of Persons

The Public Closure Area is closed to any person who:

(1) Has been evicted from the event by the permit holder, BRC LLC, whether or not such eviction was requested by BLM.

(2) Has been ordered by a BLM law enforcement officer to leave the area of the permitted event.

Any person evicted from the event forfeits any privileges to be present within the public closure area even if they possess a ticket to attend the event.

C. Fireworks

The use, sale or possession of personal fireworks is prohibited.

D. Public Use

Public use is prohibited, except for:

(1) passage through, without stopping, the Public Closure Area on the West or East Playa Roads;

(2) pedestrians with Burning Man tickets outside the fence.

E. Motor Vehicles

Motor vehicle use is prohibited, except for passage through, without

stopping, the Public Closure Area on the West or East Playa Roads. Motor vehicle is defined in paragraph (G)(3) of Section (I).

F. Waste Water Discharge

The dumping or discharge to the ground of gray water is prohibited. Gray water is water used for cooking, washing, dishwashing, or bathing and which contains soap, detergent, food scraps, or food residue.

G. Weapons

The possession of any weapon as defined in paragraph (K)(2) of Section (I) is prohibited except weapons within motor vehicles passing through the closure area, without stopping on the West or East Playa Roads.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Authority: 43 CFR 8364.1.

Dated: June 30, 2009.

Gene Seidlitz,

District Manager.

[FR Doc. E9-18721 Filed 8-4-09; 8:45 am]

BILLING CODE 4310-HC-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-09-022]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 13, 2009 at 3:30 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-1163

(Preliminary) (Woven Electric Blankets from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 14, 2009; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 21, 2009.)

5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not

disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

Issued: July 31, 2009.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9-18742 Filed 8-4-09; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on July 30, 2009, a Consent Decree Between the United States of America, the State of Louisiana, and the City of St. Martinville (“the Consent Decree”) in *United States of America & State of Louisiana v. City of St. Martinville*, Civil Action No. CV00-1238 L-0 was lodged with the United States District Court for the Western District of Louisiana.

In this action the United States asserted claims for civil penalties and injunctive relief under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, relating to violations of the requirements of a National Pollution Discharge Elimination System (“NPDES”) permit issued to St. Martinville for its sewage treatment system. Under the Consent Decree, St. Martinville will relocate the discharge point of its sewage treatment plant, conduct a remedial program for the system of pipes and related equipment used to collect and convey sewage to the treatment plant, and pay a civil penalty of \$49,926.28 in two installments. In consideration of the actions that will be performed by St. Martinville under the Consent Decree and the civil penalty payments that will be made by St. Martinville under the Consent Decree, United States covenants not to sue or to take administrative action against St. Martinville for civil claims specifically alleged in the Complaint which accrued on or before the date the Consent Decree was lodged.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United*

States of America & State of Louisiana v. City of St. Martinville, D.J. Ref 90-5-1-1-06041.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Louisiana, 800 Lafayette Street, Suite 2200, Lafayette, LA 70501, and at U.S. EPA Region 6, 1445 Ross Ave., Ste. 1200, Dallas, TX 75202. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$21.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. E9-18645 Filed 8-4-09; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-61,608]

Personnel Management, Inc., a Division of DHI Holdings, Inc. Including Workers of Premier Manufacturing Support Services, Inc. and Product Action International, LLC Working On-Site at Toyota Motor Manufacturing Indiana, Inc. Princeton, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Denial of Eligibility to Apply for Alternative Trade Adjustment

Assistance on July 20, 2007, applicable to workers of Personnel Management, Inc., a division of DHI Holdings, Inc., working on-site at Toyota Motor Manufacturing Indiana, Inc., Princeton, Indiana. The notice was published in the **Federal Register** on August 2, 2007 (72 FR 42435).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of Toyota Sequoia, Toyota Siennas and Toyota Tundras.

New information shows that workers leased by Toyota Motor Manufacturing Indiana, Inc. from Premier Manufacturing Support Services, Inc. and Product Action International, LLC were employed on-site at Toyota Motor Manufacturing Indiana, Inc., Princeton, Indiana.

The intent of the Department’s certification is to include all workers at the subject firm who were adversely affected by increases of imports of articles like or directly competitive with the vehicles produced at the subject plant in Princeton, Indiana.

The Department has determined that these workers were sufficiently under the control of Toyota Motor Manufacturing Indiana, Inc., Princeton, Indiana to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Premier Manufacturing Support Services, Inc. and Product Action International, LLC working on-site at the Princeton, Indiana location of the subject firm.

The amended notice applicable to TA-W-61,608 is hereby issued as follows:

“All workers of Personnel Management, Inc., a division of DHI Holdings, Inc., including workers of Premier Manufacturing Support Services, Inc. and Product Action International, LLC, working on-site at Toyota Motor Manufacturing Indiana, Inc., Princeton, Indiana, who became totally or partially separated from employment on or after May 29, 2006 through July 20, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.”

I further determine that all workers of Personnel Management, Inc., a division of DHI Holdings, Inc., including workers of Premier Manufacturing Support Services, Inc. and Product Action International, LLC, working on-site at Toyota Motor Manufacturing Indiana, Inc., Princeton, Indiana are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 17th day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18649 Filed 8-4-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-70,812]

Performance Fibers Operations, Inc., Salisbury Plant, Including On-Site Leased Workers From Mundy Maintenance, Services And Operations, LLC, and UTi Integrated Logistics, Salisbury, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 7, 2009, applicable to workers of Performance Fibers Operations, Inc., Salisbury Plant, Salisbury, North Carolina. The notice will be published soon in the **Federal Register**.

At the request of company officials, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of polyester tire cord and high denier industrial yarn.

The company reports that on-site leased workers from Mundy Maintenance, Services and Operations, LLC and UTi Integrated Logistics were inadvertently omitted from the certification.

Based on these findings, the Department is amending this certification to include workers leased from Mundy Maintenance, Services and Operations, LLC and UTi Integrated Logistics working on-site at the Salisbury, North Carolina location of Performance Fibers Operations, Inc., Salisbury Plant. Workers are sufficiently under control of Performance Fibers Operations to be considered leased workers.

The amended notice applicable to TA-W-70,812 is hereby issued as follows:

"All workers of Performance Fibers Operations, Inc., Salisbury Plant, including on-site leased workers from Mundy Maintenance, Services and Operations, LLC and UTi Integrated Logistics, Salisbury, North Carolina, who became totally or

partially separated from employment on or after May 29, 2008 through July 7, 2011, and all workers in the group threatened with total or partial separation from employment on July 7, 2009 through July 7, 2011, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC, this 23rd day of July 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18653 Filed 8-4-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-70,039]

Umicore Autocat USA, Inc., Catoosa, OK; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 26, 2009, applicable to workers of Umicore Autocat USA, Inc., Catoosa, Oklahoma. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of catalysts for automotive emission control systems.

The review shows that on May 7, 2007, a certification of eligibility to apply for adjustment assistance was issued for all workers of ASEC Manufacturing, a subsidiary of Delphi Corporation, Catoosa, Oklahoma, separated from employment on or after January 22, 2006 through May 7, 2009. The notice was published in the **Federal Register** on May 24, 2007 (72 FR 29182). The certification was amended on September 25, 2007, to reflect that Umicore Autocat USA, Inc. was the new owner of the firm. The notice was published in the **Federal Register** on October 3, 2007 (72 FR 56388).

In order to avoid an overlap in worker group coverage, the Department is amending the May 18, 2008 impact date established for TA-W-70,039, to read May 8, 2009.

The amended notice applicable to TA-W-70,039 is hereby issued as follows:

All workers of Umicore Autocat USA, Inc., Catoosa, Oklahoma, who became totally or partially separated from employment on or after May 8, 2009, through June 26, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

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

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18651 Filed 8-4-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 17, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 17, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 27th day of
July 2009.

Linda G. Poole,

*Certifying Officer, Division Trade Adjustment
Assistance.*

APPENDIX

[TAA petitions instituted between 5/18/09 and 5/22/09]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70001	Syracuse China Company (Comp)	Syracuse, NY	05/18/09	05/18/09
70002	Fairfield Chair Plant 2 (Wkrs)	Lenoir, NC	05/18/09	05/18/09
70003	EFTEC North America, LLC (UAW)	Dayton, OH	05/18/09	05/18/09
70004	Baralex Sherman, LLC (State)	Stacyville, ME	05/18/09	05/18/09
70005	The Mazder Corporation (Wkrs)	Dayton, OH	05/18/09	05/18/09
70006	Maine Woods (State)	Portage Lake, ME	05/18/09	05/18/09
70007	Prime Tanning Company (State)	Hartland, ME	05/18/09	05/18/09
70008	Formtek (State)	Clinton, ME	05/18/09	05/18/09
70009	PM Kelly (State)	Ashland, ME	05/18/09	05/18/09
70010	American Pride, LLC (State)	Guilford, ME	05/18/09	05/18/09
70011	C&W Industries, Inc. (Comp)	Malden, MA	05/18/09	05/18/09
70012	Sappi Fine Paper N.A. (State)	Westbrook, ME	05/18/09	05/18/09
70013	Russell Brands, LLC (Comp)	Wetumpka, AL	05/18/09	05/18/09
70014	Leviton Manufacturing Company, Inc. (Comp)	Warwick, RI	05/18/09	05/18/09
70015F	Jim C. Hamer Company (Comp)	Mt. Hope, WV	05/18/09	05/18/09
70015E	Jim C. Hamer Company (Comp)	Mt. Hope, WV	05/18/09	05/18/09
70015D	Jim C. Hamer Company (Comp)	Elkins, WV	05/18/09	05/18/09
70015C	Jim C. Hamer Company (Comp)	Morgantown Mill, WV	05/18/09	05/18/09
70015A	Jim C. Hamer Company (Comp)	Prestonsburg, KY	05/18/09	05/18/09
70015B	Jim C. Hamer Company (Comp)	Webster Springs, WV	05/18/09	05/18/09
70015	Jim C. Hamer Company (Comp)	Kenova, WV	05/18/09	05/18/09
70016	Multi-Plex (Wkrs)	Howe, IN	05/18/09	05/18/09
70017	Century Aluminum of West Virginia, Inc. (USW)	Ravenswood, WV	05/18/09	05/18/09
70018	Auto Truck Transport USA, Inc. (Wkrs)	Mt. Holly, NC	05/18/09	05/18/09
70019	The Bergquist Company Touch Screen Division (Comp)	Cannon Falls, MN	05/18/09	05/18/09
70020	TMD Friction, Inc. (Comp)	Dublin, VA	05/18/09	05/18/09
70021	Ethan Allen Operations, Inc. (State)	Andover, ME	05/18/09	05/18/09
70022	Wausau Paper Specialty Products, LLC (State)	Jay, ME	05/18/09	05/18/09
70023	Triumph Apparel Corporation (Comp)	York, PA	05/18/09	05/18/09
70024	New Page Corporation/Rumford Paper Co. (State)	Rumford, ME	05/18/09	05/18/09
70025	Baker Furniture (Wkrs)	Hickory, NC	05/18/09	04/23/09
70026	Hewlett Packard (Wkrs)	Boise, ID	05/18/09	05/18/09
70027	Ram Rod Industry (Wkrs)	Prentice, WI	05/18/09	05/18/09
70028	Three Rivers Timber, Inc. (Comp)	Kamlah, ID	05/18/09	05/18/09
70029	Chick Machine Co., Inc. (Comp)	Butler, PA	05/18/09	05/18/09
70030	Pittsburg Glass Works #23 (Wkrs)	Ewart, MI	05/18/09	05/18/09
70031	Lance Transport, Inc (Wkrs)	Hildebran, NC	05/18/09	05/18/09
70032	Mega Brands (State)	Livingston, NJ	05/18/09	05/18/09
70033	Fielder Electric Motor Repair, Inc. (Comp)	Galax, VA	05/18/09	05/18/09
70034	Vaagen Bros. Lumber, Inc. (Comp)	Colville, WA	05/18/09	05/18/09
70035	Schaeffler Group USA, Inc. (Wkrs)	Cheraw, SC	05/18/09	05/18/09
70036	Ferro Corporation (Wkrs)	Cleveland, OH	05/18/09	05/18/09
70037	Noranda Aluminum, Inc (USWA)	New Madrid, MO	05/18/09	05/18/09
70038	ABF Freight Systems (Wkrs)	Huber Heights, OH	05/18/09	05/18/09
70039	Umicore Autocat USA, Inc. (UAW)	Catoosa, OK	05/18/09	05/18/09
70040	Eaton Corporation—Truck Components (Comp)	Greenfield, IN	05/18/09	05/18/09
70041	Ami Entertainment Network (Comp)	Grand Rapids, MI	05/18/09	05/18/09
70042	Crosby National Swage (State)	Jacksonville, AR	05/18/09	05/18/09
70043	Koch Originals (Wkrs)	Evansville, IN	05/18/09	05/18/09
70044	Croskill Acquisition, LLC (Comp)	Oxford, NC	05/18/09	05/18/09
70045	Victoria & Co (Comp)	East Providence, RI	05/18/09	05/18/09
70046	Mothers Work, Inc./Destination Maternity (Wkrs)	Philadelphia, PA	05/18/09	05/18/09
70047	Superior Fabrication Company, LLC (Comp)	Kincheloe, MI	05/18/09	05/18/09
70048	Symantec Corporation (Wkrs)	Springfield, OR	05/18/09	05/18/09
70049	Dan Draexlmaier (Wkrs)	Duncan, SC	05/18/09	05/18/09
70050	Tyco Electronics Corporation (Wkrs)	Jonestown, PA	05/18/09	05/18/09
70051A	Aavid Thermalloy, LLC (Comp)	Concord, NH	05/19/09	05/18/09
70051	Aavid Thermalloy, LLC (Comp)	Laconia, NH	05/19/09	05/18/09
70052	Transfreight, LLC (Comp)	Princeton, IN	05/19/09	05/18/09
70053	Plexus Services Corp (Wkrs)	Nampa, ID	05/19/09	05/18/09
70054	Precision Coil, Inc. (Comp)	Clarksburg, WV	05/19/09	05/18/09
70055	Ovonic Energy Products, Inc (IUE)	Springboro, OH	05/19/09	05/18/09
70056	Tensolite, LLC (Wkrs)	Vancouver, WA	05/19/09	05/18/09
70057	Rockwell Automation (Wkrs)	Richland Center, WI	05/19/09	05/18/09

APPENDIX—Continued

[TAA petitions instituted between 5/18/09 and 5/22/09]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70058	Cadence Design Systems, Inc. (Wkrs)	San Jose, CA	05/19/09	05/18/09
70059	Temic Automotive of North America (Comp)	Northbrook, IL	05/19/09	05/18/09
70060	Greif Brothers Services Corporation (Union)	Culloden, WV	05/19/09	05/18/09
70061	Castleford Tailors, Ltd (Union)	Williamstown, NJ	05/19/09	05/18/09
70062	Mulholland Brothers (Wkrs)	San Francisco, CA	05/19/09	05/18/09
70063	AIT (Formerly Integrated Flow Systems) ()	Pflugersville, TX	05/19/09	05/18/09
70064	Hon Company (Wkrs)	Owensboro, KY	05/19/09	05/18/09
70065	Silver King Refrigeration, Inc. (State)	Plymouth, MN	05/19/09	05/18/09
70066	Emerson Network Power (Comp)	Tempe, AZ	05/19/09	05/18/09
70067	Alcoa, Inc. (Union)	Alcoa, TN	05/19/09	05/18/09
70068	CoAdna Photonics, Inc. (Wkrs)	Sunnyvale, CA	05/19/09	05/18/09
70069	Emerson Network Power (Com)	Marlborough, MA	05/19/09	05/18/09
70070	Tenaris Corp (State)	Blytheville, AR	05/19/09	05/18/09
70071	Indalex, Inc. (Comp)	Lincolnshire, IL	05/19/09	05/18/09
70072	Maxon (Part of HNI Company) (Wkrs)	Salisbury, NC	05/19/09	05/18/09
70073	Le Sueur, Inc (State)	Lesueur, MN	05/19/09	05/18/09
70074	Eagle Compressor (Wkrs)	Hickman, KY	05/19/09	05/18/09
70075	Colorite Specialty Resins ()	Burlington, NJ	05/19/09	05/18/09
70076	Ryerson, Inc. (other)	Nashville, TN	05/19/09	05/18/09
70077	Carrick Turning Works, Inc. (Comp)	High Point, NC	05/19/09	05/18/09
70078	Eaton Aviation Corp/Aviation and Aerospace (Comp)	Aurora, CO	05/19/09	05/18/09
70079	Aetrium Corp (State)	N St Paul, MN	05/19/09	05/18/09
70080	Larson Boats/Genmar Minnesota (State)	Little Falls, MN	05/19/09	05/18/09
70081	Scotty's Fashions (Union)	Lehigh, PA	05/19/09	05/18/09
70082	Fort Wayne Foundry Corp. (Comp)	Fort Wayne, IN	05/19/09	05/18/09
70083	Circuit Check Inc (State)	Maple Grove, MN	05/19/09	05/18/09
70084	Vishay Dale (State)	Columbus, NE	05/19/09	05/18/09
70085	Emerson Network Power—Embedded Computing (Comp)	Madison, WI	05/19/09	05/18/09
70086	EBI Holding, LLC (State)	Parsippany, NJ	05/19/09	05/18/09
70087	Entegris, Inc. (State)	Chaska, MN	05/19/09	05/18/09
70088	Kelsey-Hayes Company (Comp)	Ettrick, WI	05/19/09	05/18/09
70089	Glenn Springs Holdings, Inc. (Comp)	New Castle, DE	05/19/09	05/18/09
70090	Tama Manufacturing Company Inc. (Union)	Allentown, PA	05/19/09	05/18/09
70091	NBS Card Technologies (Wrkrs)	Paramus, NJ	05/19/09	05/18/09
70092	Spartan Felt (State)	Roebuck, SC	05/19/09	05/18/09
70093	Vesuvius USA (Comp)	Fisher, IL	05/19/09	05/18/09
70094	Premier Mfg. Support Services, Inc (Wrkrs)	Princeton, IN	05/19/09	05/18/09
70095	Biotage, LLC (Comp)	Charlottesville, VA	05/19/09	05/18/09
70096	Auburn Mills, Inc. (Union)	Montgomeryville, PA	05/19/09	05/18/09
70096A	Auburn Mills, Inc. (Union)	Auburn, PA	05/19/09	05/18/09
70097	Hydro Carbide Inc (Wrkrs)	Latrobe, PA	05/19/09	05/18/09
70098	Stahl (USA), Inc (Comp)	Peabody, MA	05/19/09	05/18/09
70099	Snap On Equipment (State)	Conway, AR	05/19/09	05/18/09
70100	Seel Tool and Die (Comp)	St. Marys, PA	05/19/09	05/18/09
70101	Domtar Industries Inc. (State)	Baileysville, ME	05/19/09	05/18/09
70102	Fairchild Semiconductor, Signal Path Organization (State)	So Portland, ME	05/19/09	05/18/09
70103	Vesuvius USA (Comp)	Charleston, IL	05/19/09	05/18/09
70104	North American Pipe Corp. (State)	Van Buren, AR	05/19/09	05/18/09
70105	San Antonio Shoe Conway Shoe Company (State)	Conway, AR	05/19/09	05/18/09
70106	TG Missouri Corporation (Comp)	Perryville, MO	05/19/09	05/18/09
70107	International Brotherhood of Electrical Workers Local Union 567 (State).	Lewiston, ME	05/19/09	05/18/09
70108	Woodstructures Inc (State)	Biddleford, ME	05/19/09	05/18/09
70109	Modern Woodcrafters LLC (State)	Luviston, ME	05/19/09	05/18/09
70110	Columbia Forest Products (State)	Presane Isle, ME	05/19/09	05/18/09
70111	TDK—Ferrites Corporation (Wkrs)	Shawnee, OK	05/19/09	05/18/09
70112	Sumitomo Electric Wiring Systems, Inc. (Comp)	Scottsville, KY	05/19/09	05/18/09
70113	Maine Wood Recycling Inc (State)	Ashland, ME	05/19/09	05/18/09
70114	Schlumberger (Comp)	Ft Smith, AR	05/19/09	05/18/09
70115	Senco Products, Inc. (Wkrs)	Cincinnati, OH	05/19/09	05/18/09
70116	Mullican Lumber Co, LP (Comp)	Ronceverte, WV	05/19/09	05/18/09
70117	Fulghum Fibres (State)	Baileyville, ME	05/19/09	05/18/09
70118	JDM Import Company, Inc. (Wkrs)	New York, NY	05/19/09	05/18/09
70119	Photonics (Comp)	Boise, ID	05/19/09	05/18/09
70120	Atlas Copco Comptec, LLC (State)	Voorheesville, NY	05/19/09	05/18/09
70121	Banner Engineering Corp. (State)	Fergus Falls, MN	05/19/09	05/18/09
70122	Oviso Manufacturing (State)	Concord, CA	05/19/09	05/18/09
70123	Electrolux Home Products, INC. (UAW)	Webster City, IA	05/19/09	05/18/09
70124	Hutchinson Technology Inc (State)	Hutchinson, MN	05/19/09	05/18/09
70125	Metaldyne Corporation (Comp)	Plymouth, MI	05/19/09	05/18/09

APPENDIX—Continued

[TAA petitions instituted between 5/18/09 and 5/22/09]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70126	Pass and Seymour Legrand (Comp)	Whitsett, NC	05/19/09	05/18/09
70127	Coca Cola Enterprises, Inc (State)	Brandon, FL	05/19/09	05/18/09
70128	AmerCable Inc (State)	El Dorado, AR	05/19/09	05/18/09
70129	Bose Corporation—Columbia, SC Plant (Comp)	Blythewood, SC	05/19/09	05/18/09
70130	Pilgrims Pride Corp (State)	Pittsburg, TX	05/19/09	05/18/09
70131	Niagara Cutter, Inc. (Wkrs)	Reynoldsville, PA	05/19/09	05/18/09
70132	Smead Manufacturing (Wkrs)	Logan, OH	05/19/09	05/18/09
70133	Hussmann Gloversville (Comp)	Gloversville, NY	05/19/09	05/18/09
70134	Finish Line Hosiery, Inc. (Comp)	Fort Payne, AL	05/19/09	05/18/09
70135	Advanced Micro Devices, Inc. (Wkrs)	Sunnyvale, CA	05/19/09	05/18/09
70136	Hyosung USA, Inc (Comp)	Utica, NY	05/19/09	05/18/09
70137	J.T. Posey Company/Arcadia Manufacturing Group (Comp)	Arcadia, CA	05/19/09	05/18/09
70138	Freescale Semiconductor/Technical Info. Center (Wkrs)	Austin, TX	05/19/09	05/18/09
70139	Valeo Electrical Systems (IUE)	Rochester, NY	05/19/09	05/18/09
70140	Wall Printing Company (Comp)	High Point, NC	05/19/09	05/18/09
70141	McMurray Fabrics, Inc. (Wkrs)	Aberdeen, NC	05/19/09	05/18/09
70142	United States Steel Great Lakes Works (USWA)	Ecorse, MI	05/19/09	05/18/09
70143	JL French Automotive Castings (Comp)	Sheboygan, WI	05/19/09	05/18/09
70144	Cenveo/Cadmus Communications (Wkrs)	Ephrata, PA	05/19/09	05/18/09
70145	Sunbury Textile Mills (Wkrs)	Sunbury, PA	05/19/09	05/18/09
70146	Mar/Tron (State)	Flippin, AR	05/19/09	05/18/09
70147	Lee Mah Electronics (Wrkrs)	San Francisco, CA	05/19/09	05/18/09
70148	W.Y. Shugart and Sons, Inc. (Comp)	Fort Payne, AL	05/19/09	05/18/09
70149	Dyno Nobel (Wkrs)	Wolf Lake, IL	05/19/09	05/11/09
70150	CB&I Constructors, Inc. (IBB)	Warren, PA	05/19/09	05/18/09
70151	Smith & Nephew, Inc. (Comp)	Largo, FL	05/19/09	05/04/09
70152	La-Z-Boy South (Comp)	Newton, MS	05/19/09	05/18/09
70153	Henkel Corporation (Comp)	Ontario, CA	05/19/09	05/18/09
70154	TitanX Engine Cooling (Comp)	Jamestown, NY	05/19/09	05/18/09
70155	International Automotive Components (Comp)	Sidney, OH	05/19/09	05/18/09
70156	Henkel Corporation (Comp)	Canton, MA	05/19/09	05/18/09
70157	Henkel Corporation—CA (Comp)	City of Industry, CA	05/19/09	05/18/09
70158	Miller Welding & Machine Co (Wkrs)	Brookville, PA	05/19/09	05/18/09
70159	Regal Beloit (Comp)	Brownsville, TX	05/19/09	05/18/09
70160	Knoll, Incorporated (Wkrs)	East Greenville, PA	05/19/09	05/18/09
70161	Kelsey-Hayes Company (Comp)	Wixom, MI	05/19/09	05/18/09
70162	Emcore Corporation (Wkrs)	Albuquerque, NM	05/19/09	05/18/09
70163	Electronic Data Systems (EDS), An HP Company (Wkrs)	Charlotte, NC	05/19/09	05/18/09
70164	Goodyear Tire & Rubber Co (USW)	Union City, TN	05/19/09	05/18/09
70165	Basler Electric Company (State)	Caraway, AR	05/19/09	05/18/09
70166	Health Net, Inc. (Comp)	Woodland Hills, CA	05/19/09	05/18/09
70167	Melampy Manufacturing (Wkrs)	Gibsonia, PA	05/19/09	05/18/09
70168	True Textiles, Inc. (Comp)	Lancaster, SC	05/19/09	05/18/09
70169	Molex, Inc. (State)	Maumelle, AR	05/19/09	05/18/09
70170	Emporium Hardwoods Lumber LLC (Wkrs)	Emporium, PA	05/19/09	04/21/09
70171	Inergy Automotive Systems (Comp)	Adrian, MI	05/19/09	05/18/09
70172	Midwest Tool and Die Corp (Wkrs)	Fort Wayne, IN	05/19/09	05/18/09
70173	Major Tool Company (Wkrs)	Knoxville, TN	05/19/09	05/18/09
70174	D.R. Johnson Lumber Company (Comp)	Riddle, OR	05/19/09	05/18/09
70175	Riddle Laminators (Comp)	Riddle, OR	05/19/09	05/18/09
70176	Tex Tech Industries (State)	North Monmouth, ME	05/19/09	05/18/09
70177	Cascade Steel (Wkrs)	McMinnville, OR	05/19/09	05/18/09
70178	Geo Specialty Chemical (State)	Gibbstown, NJ	05/19/09	05/18/09
70179	IC Corporation (State)	Conway, AR	05/19/09	05/18/09
70180	Chicago Sun-Times (Comp)	Chicago, IL	05/19/09	05/18/09
70180T	Midwest Suburban Publishing (Comp)	Tinley Park, IL	05/19/09	05/18/09
70180B	The Doings (Comp)	Hinsdale, IL	05/19/09	05/18/09
70180C	Post-Tribune (Comp)	Merrillville, IN	05/19/09	05/18/09
70180D	Fox Valley Productions (Comp)	Plainfield, IL	05/19/09	05/18/09
70180E	Aurora Beacon News (Comp)	Aurora, IL	05/19/09	05/18/09
70180F	Elgin Courier (Comp)	Elgin, IL	05/19/09	05/18/09
70180G	Waukegan News Sun (Comp)	Waukegan, IL	05/19/09	05/18/09
70180H	Sun Publications (Comp)	Naperville, IL	05/19/09	05/18/09
70180I	Joliet Herald News (Comp)	Joliet, IL	05/19/09	05/18/09
70180J	Midwest Suburban Publishing (Comp)	Tinley Park, IL	05/19/09	05/18/09
70180K	Chicago Sun-Times (Comp)	Chicago, IL	05/19/09	05/18/09
70180L	Pioneer Press (Comp)	Glenview, IL	05/19/09	05/18/09
70180M	The Doings (Comp)	Hinsdale, IL	05/19/09	05/18/09
70180N	Post-Tribune (Comp)	Merrillville, IN	05/19/09	05/18/09
70180O	Fox Valley Productions (Comp)	Plainfield, IL	05/19/09	05/18/09

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[TAA petitions instituted between 5/18/09 and 5/22/09]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70180P	Aurora Beacon News (Comp)	Aurora, IL	05/19/09	05/18/09
70180Q	Waukegan News Sun (Comp)	Waukegan, IL	05/19/09	05/18/09
70180R	Sun Publications (Comp)	Naperville, IL	05/19/09	05/18/09
70180S	Joliet Herald News (Comp)	Joliet, IL	05/19/09	05/18/09
70180A	Pioneer Press (Comp)	Glenview, IL	05/19/09	05/18/09
70181	Hamilton Sundstrand (State)	Windsor Locks, CT	05/19/09	05/18/09
70182	St Lawrence Atlantic Railroad (State)	Auburn, ME	05/19/09	05/18/09
70183	Sony Technology Center—Pittsburg (Comp)	Mt Pleasant, PA	05/19/09	05/18/09
70184	Dana Commercial Vehicles Products, LLC (AFL)	Humboldt, TN	05/19/09	05/18/09
70185	Gulliver's Travels, Inc. (State)	Sarasota, FL	05/19/09	05/18/09
70186	Engel Machinery, Inc. (Wkrs)	York, PA	05/19/09	05/18/09
70187	Saint-Gobain Containers (GMP)	Waxahachie, TX	05/19/09	05/19/09
70188	Century Mold Co., Inc. (Comp)	Shelbyville, TN	05/19/09	05/18/09
70189	Signature Aluminum (USWA)	Greenville, NC	05/19/09	05/18/09
70190	Sherwood Value LLC (Union)	Washington, PA	05/19/09	05/18/09
70191	B. Braum Medical, Inc. (State)	Cherry Hill, NJ	05/19/09	05/18/09
70192	Franklin Pump Systems, Inc (State)	Little Rock, AR	05/19/09	05/18/09
70193A	Robertson Airtech International, Inc. (Wkrs)	Gastonia, NC	05/19/09	05/18/09
70193	Robertson Airtech International, Inc. (Wkrs)	Charlotte, NC	05/19/09	05/18/09
70194	Maida Development Company (Comp)	Hampton, VA	05/19/09	05/18/09
70195	Inergy Automotive Systems (USA) LLC (Comp)	Troy, MI	05/19/09	05/18/09
70196	Cordis Corporation, a Division of Codman & Shurtleff, Inc. (State).	Miami Lakes, FL	05/19/09	05/18/09
70197	Wallenius Wilhelmsen Logisitics (State)	Woodcliff Lake, NJ	05/19/09	05/18/09
70198	United Association of Journeymen and Apprentices Plumbing and Pipefitting (State).	Augusta, ME	05/19/09	05/18/09
70199	WestPoint Home, Inc. (State)	ChIPLEY, FL	05/19/09	05/18/09
70200	VWR International, LLC (State)	Bridgeport, NJ	05/19/09	05/18/09
70201	Tivoly, Inc. (IAMAW)	Derby Line, VT	05/19/09	05/18/09
70202	Eaton Corporation (State)	Searcy, AR	05/19/09	05/18/09
70203	Bayloff Stamped Products (USW)	Kinsman, OH	05/19/09	05/18/09
70204	Baxter Healthcare Corporation (State)	North Largo, FL	05/19/09	05/18/09
70205	Springs Window Fashion (Wkrs)	Grayling, MI	05/19/09	05/18/09
70206	Doral Manufacturing, Inc. (State)	Miami, FL	05/19/09	05/18/09
70207	FLA Orthopedics, Inc. (State)	Miramar, FL	05/19/09	05/18/09
70208	3M Company (Comp)	Columbia, MO	05/19/09	05/19/09
70209	AGC Flat Glass North America, Inc. (Comp)	Bridgeport, WV	05/19/09	05/18/09
70210	First Data Corporation, Global Customer Service Operations (State).	Coral Springs Greenwood, FL	05/19/09	05/18/09
70211	Premium Allied Tool (Wkrs)	Owensboro, KY	05/19/09	05/18/09
70212	Centurion Wireless Technologies (State)	Lincoln, NE	05/19/09	05/18/09
70213	Levi Strauss and Company (Wkrs)	San Francisco, CA	05/19/09	05/18/09
70214	W and N Machine Shop, Inc. (Comp)	St. Marys, PA	05/19/09	05/18/09
70215	Schawk, Inc. (State)	Mount Olive, NJ	05/19/09	05/18/09
70216	Nexergy, Inc. (Comp)	Canon City, CO	05/19/09	05/18/09
70217	SKF USA, Inc. (Comp)	Elgin, IL	05/19/09	05/18/09
70218	Ryden Logistics (State)	Ledgewood, NJ	05/19/09	05/18/09
70219	Vescom Corporation (State)	Hampden, ME	05/19/09	05/18/09
70220	BoMag Americas, Inc. (Wkrs)	Kewanee, IL	05/19/09	05/18/09
70221	Wacker Polymers Corporation (State)	Dayton, NJ	05/19/09	05/18/09
70222	Solutia, Inc. (Comp)	Trenton, MI	05/19/09	05/18/09
70223	Eaton Corporation (State)	Mountain Home, AR	05/19/09	05/18/09
70224	Therm-O-Disc, Inc. (Comp)	Muskegon, MI	05/19/09	05/18/09
70225	Thin Film Technology (State)	North Mankato, MN	05/19/09	05/18/09
70226	Egide USA, Inc. (State)	Cambridge, MD	05/19/09	05/19/09
70227	Meridian Automotive Systems-Plant # 5 (Comp)	Grand Rapids, MI	05/19/09	05/19/09
70228	Johnson Controls, Inc. (UAW)	Greenfield, OH	05/19/09	05/19/09
70229	Stein Steel Mill Services (USWA)	Broadview Heights, OH	05/19/09	05/19/09
70230	Millinocket Fabrication and Machine, Inc. (Comp)	Millinocket, ME	05/19/09	05/18/09
70231	Bassett Factory Outlet Store (Comp)	Bassett, VA	05/19/09	05/19/09
70232	Halliburton Energy Services (Wkrs)	Duncan, OK	05/19/09	05/19/09
70233	Pine Hosiery Mills, Inc (Comp)	Star, NC	05/20/09	05/19/09
70234	Hampton Affiliates (Comp)	Darrington, WA	05/20/09	05/18/09
70235	SCI, LLC/Zener-Rectifier (Comp)	Phoenix, AZ	05/20/09	05/18/09
70236	Collis, Inc (State)	Clinton, IA	05/20/09	05/18/09
70237	Collis, Inc. (Comp)	Evansville, IN	05/20/09	05/18/09
70238	Straits Steel and Wire Company (Comp)	Ludington, MI	05/20/09	05/18/09
70239	Southern Steel and Wire Company, Inc. (Comp)	Fort Smith, AR	05/20/09	05/18/09
70240	American Appliance Products, Inc. (Comp)	Newport, TN	05/20/09	05/18/09
70241	Alabama Wire Products, Inc. (Comp)	Elizabethtown, KY	05/20/09	05/18/09

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[TAA petitions instituted between 5/18/09 and 5/22/09]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70242	Findlay Industries (Union)	Findlay, OH	05/20/09	05/19/09
70243	International Paper Company (Comp)	Franklin, VA	05/20/09	05/19/09
70244	Align Technology, Inc. (Comp)	Santa Clara, CA	05/20/09	05/18/09
70245	Caye Upholstery (WKRS)	Amory, MS	05/20/09	05/18/09
70246	Integrated Manufacturing Technologies, Inc. (Comp)	Elgin, TX	05/20/09	05/18/09
70247	Panel Crafters, Inc. (Wkrs)	White City, OR	05/20/09	05/18/09
70248	Borgwarner Turbo & Emissions Systems, Inc. (Wkrs)	Arden, NC	05/20/09	05/19/09
70249	US Technology Marine Services (Wkrs)	Caton, OH	05/20/09	05/19/09
70250	Jagger Brothers, Inc. (Comp)	Springvale, ME	05/20/09	05/18/09
70251	Toyal American, Inc. (Comp)	Lockport, IL	05/20/09	05/18/09
70252	Ogden Manufacturing, Inc. (Comp)	Edinboro, PA	05/20/09	05/18/09
70253	Fluidmaster, Inc. (Comp)	La Vergne, TN	05/20/09	05/18/09
70254	Moldingmaster (Comp)	Santa Fe Springs, CA	05/20/09	05/18/09
70255	Tyco Safety Products (Comp)	Westminster, MA	05/20/09	05/13/09
70256	Fluidmaster, Inc. (Comp)	San Juan Capistrano, CA	05/20/09	05/18/09
70257	Eaton Corporation (Comp)	Mentor, OH	05/20/09	05/18/09
70258	Toho Tenax America, Inc. (Comp)	Rockwood, TN	05/20/09	05/18/09
70259	Chemetail Foote Corp. (Comp)	Silver Peak, NV	05/20/09	05/15/09
70260	Ring Screw LLC—Fenton Operations (Comp)	Fenton, MI	05/20/09	05/18/09
70260K	Camcar LLC—Spencer Operations (Comp)	Spencer, TN	05/20/09	05/18/09
70260L	Camcar LLC—Rochester Operations (Comp)	Rochester, IN	05/20/09	05/18/09
70260J	Camcar LLC—Belvidere Operations (Comp)	Belvidere, MI	05/20/09	05/18/09
70260I	Ring Screw LLC—Holly Distribution Center (Comp)	Holly, MI	05/20/09	05/18/09
70260H	Ring Screw LLC—Semco Fasteners (Comp)	Holly, MI	05/20/09	05/18/09
70260G	Acument Global Technologies—Headquarters (Comp)	Troy, MI	05/20/09	05/18/09
70260F	Ring Screw LLC—Shamrock Fasteners (Comp)	Sterling Heights, MI	05/20/09	05/18/09
70260E	Ring Screw LLC—Gainey Operations (Comp)	Holly, MI	05/20/09	05/18/09
70260D	Burkland LLC—Goodrich Operations (Comp)	Goodrich, MI	05/20/09	05/18/09
70260C	Ring Screw LLC—Titan Fasteners (Comp)	Holly, MI	05/20/09	05/18/09
70260B	Ring Screw LLC—Detroit Distribution Center (Comp)	Detroit, MI	05/20/09	05/18/09
70260A	Ring Screw LLC—Warren Operations (Comp)	Warren, MI	05/20/09	05/18/09
70261	Stimson Lumber Company (Union)	Clatskanie, OR	05/20/09	05/18/09
70262	Auto Nation (Wkrs)	Fort Lauderdale, FL	05/20/09	05/18/09
70263	Sumitomo Electric Wiring Systems, Inc. (Comp)	Edmonton, KY	05/20/09	05/18/09
70264	Phelps Dodge Corp. Freeport (Wkrs)	Phoenix, AZ	05/20/09	05/18/09
70265	Weyerhaeuser Engineered Wood Products (comp)	Grayling, MI	05/20/09	05/18/09
70266	Musashi South Carolina, Inc. (Comp)	Bennettsville, SC	05/20/09	05/18/09
70267	Boise Cascade LLC Inland Region—Northeastern Oregon—Plywood & Stud Mill (State).	Elgin, OR	05/20/09	05/18/09
70268	LDS Test and Measurement, LLC (Comp)	Middleton, WI	05/20/09	05/19/09
70269	KJP Telecommunications (State)	Faribault, MN	05/20/09	05/18/09
70270	Mipox International Corporation (Comp)	Hayward, CA	05/20/09	05/18/09
70271	Georgia-Pacific (Comp)	Philimath, OR	05/20/09	05/13/09
70272	Mercedes-Benz-MBUSI (Wkrs)	Vance, AL	05/20/09	05/18/09
70273	Plum Creek MDF, Inc. (Comp)	Columbia Falls, MT	05/20/09	05/19/09
70274	Avantech Manufacturing, LLC (Comp)	Mt. Pleasant, TN	05/20/09	05/19/09
70275	Bauhaus USA, Inc. (Comp)	Saltito, MS	05/20/09	05/19/09
70276	EcoQuest Holding Corporation (Comp)	Greeneville, TN	05/20/09	05/18/09
70277	Mississippi Polymers, Inc. (Comp)	Corinth, MS	05/20/09	05/19/09
70278	Acushnet Company (Comp)	Brockton, MA	05/20/09	05/19/09
70279	Energy Partner Ltd. (Comp)	New Orleans, LA	05/20/09	05/09/09
70280	Hewlett-Packard Caribe, BV, LLC (State)	Aguadilla, PR	05/20/09	05/18/09
70281	AGC Flatglass North America, Inc. Corporate Services Office (Comp).	Kingsport, TN	05/20/09	04/18/09
70282	J.W. Pike LTD/Vintage Verandah, Canada, Inc. (Wkrs)	Kalispell, MT	05/20/09	05/18/09
70283	Sandvik Mining & Construction (Comp)	Mansfield, TX	05/20/09	05/19/09
70284	Plains Cotton Cooperative Association—American Cotton Growers (Comp).	Lubbock, TX	05/20/09	05/18/09
70285	EDS (Wks)	Lansing, MI	05/20/09	05/19/09
70286	Ferrell MFG., Inc. (Comp)	Graham, NC	05/20/09	05/19/09
70287	Straits Steel and Wire Company (Comp)	Dallas, TX	05/20/09	05/18/09
70288	Russell Brands, LLC/Russell Athletic (Comp)	Atlanta, GA	05/20/09	05/18/09
70289	Datalogic, Mobile Inc. (Comp)	Eugene, OR	05/20/09	05/19/09
70290	Avery Dennison (Comp)	Rock Hill, SC	05/20/09	05/19/09
70291	Maxim Integrated Products (Worker)	Dallas, TX	05/20/09	05/19/09
70292	BHP Copper Inc., Pinto Valley Operations & San Manuel Arizona Railroad Co (Comp).	Miami, AZ	05/20/09	05/19/09
70293	ZMI Portec, Inc. (Wkrs)	Sibley, IA	05/20/09	05/05/09
70294	Quala-Die, Inc. (Comp)	St. Marys, PA	05/20/09	05/19/09
70295	Ultimizers, Inc. (Comp)	Boring, OR	05/20/09	05/18/09

APPENDIX—Continued

[TAA petitions instituted between 5/18/09 and 5/22/09]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70296	SMC Corporation of America-Detroit Branch (Worker)	Rochester Hills, MI	05/20/09	05/19/09
70297	Alcoa Wheel and Transportation Products (Comp)	Lebanon, VA	05/20/09	05/19/09
70298	Leeds (Wkrs)	Warren, OH	05/20/09	05/18/09
70299	Hunt Forest Products, Inc. (Comp)	Natalabany, LA	05/20/09	05/19/09
70300	Exide Technologies (State)	Baton Rouge, LA	05/20/09	05/19/09
70301	May and Scofield, LLC (Comp)	Fowlerville, MI	05/20/09	05/18/09
70302	Pilgrims Pride (State)	Farmerville, LA	05/20/09	05/19/09
70303	Bentex Mills, Inc. (Comp)	Greensboro, NC	05/20/09	05/19/09
70304	Biovail Laboratories International, SRL (State)	Dorado, PR	05/20/09	05/18/09
70305	Shorewood Packaging (Wks)	Springfield, OR	05/20/09	05/18/09
70306	Noble Metal Processing, Inc. (Wkrs)	Warren, MI	05/20/09	05/19/09
70307	Morton Metalcraft of Pennsylvania (Comp)	Bedford, PA	05/20/09	05/19/09
70308	Milso Industries—Matthews Casket Division (Comp)	Richmond, IN	05/20/09	05/19/09
70309	Mt. Vernon Mills—LaFrance Industries (Wks)	La France, SC	05/20/09	05/18/09
70310	Ortho Pharmaceutical, Division of Janssen Ortho LLC (State).	Manati, PR	05/20/09	05/18/09
70311	Newport Precision, Inc. (Wks)	Newport, TN	05/20/09	05/19/09
70312	Alcatel-Lucent (State)	Westford, MA	05/20/09	05/19/09
70313	Continental Automotive Systems US Inc. (Comp)	Elkhart, IN	05/20/09	05/18/09
70314	Jeld-Wen (Wkrs)	Klamath Falls, OR	05/20/09	05/19/09
70315C	Dodger Industries, Inc. (Comp)	Raleigh, NC	05/20/09	05/18/09
70315A	Dodger Industries, Inc. (Comp)	Clinton, NC	05/20/09	05/18/09
70315B	Dodger Industries, Inc. (Comp)	Fayetteville, NC	05/20/09	05/18/09
70315	Dodger Industries, Inc. (Comp)	Eldora, IA	05/20/09	05/18/09
70316	Oneal Steel (Wks)	Roanoke, VA	05/20/09	05/19/09
70317	SMTC, Enclosure Systems Division (Wks)	Franklin, MA	05/20/09	05/18/09
70318	St. Onge Logging, Inc. (Comp)	Kalispell, MT	05/20/09	05/18/09
70319	Xerox Corporation (Wkrs)	Lewisville, TX	05/20/09	05/18/09
70320	Cannondale Bicycle Corporation (Comp)	Bedford, PA	05/20/09	05/18/09
70321	Leggett and Platt, Inc. (Wks)	Wilkes-Barre, PA	05/20/09	05/18/09
70322	Steelscape (Comp)	Rancho Cucamonga, CA	05/20/09	05/18/09
70323	Tokyo Electron America (Comp)	Austin, TX	05/20/09	05/19/09
70324	Delphi Packard Electric (Union)	Warren, OH	05/20/09	05/19/09
70325	Tyco Electronics (Comp)	Emigsville, PA	05/20/09	05/18/09
70326	Ford Motor Co (State)	Dearborn, MI	05/20/09	05/18/09
70327	SAPA Fabricated Products (State)	Magnolia, AR	05/20/09	05/18/09
70328	Gaston County Dyeing Machine CO (State)	Mount Holly, NC	05/20/09	05/18/09
70329	Tech Group (State)	Van Buren, AR	05/20/09	05/19/09
70330	Siemens PLM Software, Inc. (Wks)	Troy, MI	05/20/09	05/19/09
70331	DRS Laurel Technologies (Wks)	Johnstown, PA	05/20/09	05/18/09
70332	LexisNexis (State)	San Francisco, CA	05/20/09	05/18/09
70333	URS Corporation (wkrs)	Grand Rapids, MI	05/20/09	05/18/09
70334	DHL U.S. Express (State)	San Francisco, CA	05/20/09	05/19/09
70335	Milliken and Company (Wrkrs)	Columbus, NC	05/20/09	05/19/09
70336	Brunswick Bowling & Billiard Corp (State)	Muskegon, MI	05/20/09	05/19/09
70337	Milliken & Co. Hatch Plant (Wks)	Columbus, NC	05/20/09	05/19/09
70338	Rapid-Line, Inc. (Wks)	Wyoming, MI	05/20/09	05/18/09
70339	Delphi Corporation (Wrkrs)	Auburn Hills, MI	05/20/09	05/19/09
70340	Computer Sciences Corporation (Wrkrs)	Caledonia, MI	05/20/09	05/18/09
70341	DENSO Manufacturing Athens, Tennessee (Wkrs)	Athens, TN	05/20/09	05/19/09
70342	Plum Creek Northwest Lumber, Inc. (Comp)	Columbia Falls, MT	05/20/09	05/19/09
70343	WuXi Apptec (Wks)	Philadelphia, PA	05/20/09	05/18/09
70344	Atlantic Southeast Airlines (Wrkrs)	Fort Smith, AR	05/20/09	05/18/09
70345	Avery Dennison (Comp)	Sayre, PA	05/20/09	05/18/09
70346	Nabors Drilling USA, LP (One St)	Fruita, CO	05/20/09	05/19/09
70347	Mountain Skyliners, Inc. (Wks)	Leavenworth, WA	05/20/09	05/12/09
70348	Clover Yarns, Inc. (Comp)	Clover, VA	05/20/09	05/19/09
70349	Trane Commercial Systems (State)	Fort Smith, AR	05/21/09	05/18/09
70350	Vin-Tex Sealers, Inc. (State)	Itasca, IL	05/21/09	05/18/09
70351	National Semiconductor-Arlington (Comp)	Arlington, TX	05/21/09	05/18/09
70352	Redding Record Searchlight (State)	Redding, CA	05/21/09	05/18/09
70353	Straits Steel and Wire Company (Comp)	Dallas, TX	05/21/09	05/18/09
70354	Molo-Rite tool (State)	Fraser, MI	05/21/09	05/19/09
70355	Carmeuse Lime and Stone, Inc. (State)	Pittsburgh, PA	05/21/09	05/19/09
70356	Ford Motor Co., Powertrain Fuel—Subsystem Laboratories (State).	Dearborn, MI	05/21/09	05/19/09
70357	Transform Automotive LLC (State)	Sterling Heights, MI	05/21/09	05/19/09
70358	Eudora Garment Corporation (State)	Eudora, AR	05/21/09	05/18/09
70359	Firestone Building Products Co. (State)	Prescott, AR	05/21/09	05/19/09
70360	Federal-Mogul Ignition Products (State)	Dumas, AR	05/21/09	05/19/09

APPENDIX—Continued

[TAA petitions instituted between 5/18/09 and 5/22/09]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70361	TG Fluid Systems (State)	Brighton, MI	05/21/09	05/19/09
70362	Tokyo Electron Massachusetts (State)	Beverly, MA	05/21/09	05/19/09
70363	TRW/Kelsey Hayes (State)	Farmington Hills, MI	05/21/09	05/19/09
70364	Carboloy Inc. (State)	Warren, MI	05/21/09	05/19/09
70365	Bell Engineering (State)	Saginaw, MI	05/21/09	05/19/09
70366	Lennox Industries Inc (State)	Stuttgart, AR	05/21/09	05/19/09
70367	Unit Structure LLC (State)	Magnolia, AR	05/21/09	05/18/09
70368	Arkansas Warehouse Inc. (State)	Fort Smith, AR	05/21/09	05/19/09
70369	Wabash Wood Products (State)	Harrison, AR	05/21/09	05/19/09
70370	Danfoss (State)	Arkadelphia, AR	05/21/09	05/18/09
70371	Computer Sciences Corporation (Wkrs)	Caledonia, MI	05/21/09	05/18/09
70372	Tower Automotive (Wkrs)	Elkton, MI	05/21/09	05/19/09
70373	Eaton Hydraulics (State)	Greenwood, SC	05/21/09	05/19/09
70374	Vanity Fair Brands Knitting Facility (Comp)	Jackson, AL	05/21/09	05/19/09
70375	Mohawk Industries (One St)	Calhoun Falls, SC	05/21/09	05/19/09
70376	Kaiser Aluminum (One St)	Greenwood, SC	05/21/09	05/19/09
70377	Morgan AM & T (Union)	Coudersport, PA	05/21/09	05/20/09
70378	Carpenter Company (Wkrs)	Richmond, VA	05/21/09	05/19/09
70379	Stanley Works (State)	New Britain, CT	05/21/09	05/20/09
70380	Americas Styrenics, Marietta, OH Facility (USW)	Marietta, OH	05/21/09	05/20/09
70381	Thomas Steel Strip Corporation (Wkrs)	Warren, OH	05/21/09	05/19/09
70382	Cadre Steel detailing, Inc. (Wkrs)	Kalama, WA	05/21/09	05/19/09
70383	Veyance Technologies Inc. (Union)	Sun Prairie, WI	05/21/09	05/20/09
70384	National Mills, Inc. (Comp)	Pittsburg, KS	05/21/09	05/19/09
70385	Russell Brands, LLC (Comp)	Springfield, MA	05/21/09	05/19/09
70386	Mazer Corporation (Wkrs)	Dayton, OH	05/21/09	05/19/09
70387	Conrad Imports, Inc. (Wkrs)	San Francisco, CA	05/21/09	05/19/09
70388	Tim Bar Packaging and Display Oneida Division (Comp)	Vernon, NY	05/21/09	05/19/09
70389	Stanley Access Technologies (State)	Farmington, CT	05/21/09	05/19/09
70390	Springs Global US, Inc. Sardis Plant (Comp)	Sadris, MS	05/21/09	05/18/09
70391	Consolidated Metco Inc. (Wkrs)	Canton, NC	05/21/09	05/18/09
70392	UAW Local 1250 (UAW)	Brook Park, OH	05/21/09	05/20/09
70393	Rawlings Sporting Goods Washington Distribution Center (Comp)	Washington, MO	05/21/09	05/20/09
70394	Multi-Plastic of New Mexico, Inc. (Comp)	Las Cruces, NM	05/21/09	05/20/09
70395	Dawson Metal Co., Inc. (Wkrs)	Jamestown, NY	05/21/09	05/18/09
70396	Wheeling Machine Products (State)	Pine Bluff, AR	05/21/09	05/19/09
70397	Weyerhaeuser Company (State)	Emerson, AR	05/21/09	05/19/09
70398	Cessna Aircraft (One St)	Bend, OR	05/21/09	05/18/09
70399	Monaco Coach Corp. (One St)	Hines, OR	05/21/09	05/18/09
70400	Delphi Connection Systems/Specialty Electronics (Comp)	Landrum, SC	05/21/09	05/19/09
70401	IM Flash Technologies, LLC (Wkrs)	Lehi, UT	05/21/09	05/18/09
70402	American and Efird, Inc. (Wkrs)	Mount Holly, NC	05/21/09	05/19/09
70403	IBM (Wkrs)	El Segundo, CA	05/21/09	05/18/09
70404	Century Land and Timber Inc. (Comp)	Greenville, NC	05/22/09	05/20/09
70405	Avaya Inc. (State)	Highlands Ranch, CO	05/22/09	05/19/09
70406	Greenville Metals, Inc. (Comp)	Transfer, PA	05/22/09	05/19/09
70407	L and L Products, Inc. (Worker)	Romeo, MI	05/22/09	05/19/09
70408	DJ Fashions, LLC (Wkrs)	New York, NY	05/22/09	05/08/09
70409	Frontier Spinning Mills, Plant 6 (Comp)	Cheraw, SC	05/22/09	05/18/09
70410	Avnet Grapevine Assembly Facility (Comp)	Grapevine, TX	05/22/09	05/19/09
70411	Tarkio Corporation (Comp)	Beaverton, OR	05/22/09	05/19/09
70412	Weyerhaeuser (Comp)	Dallas, OR	05/22/09	05/18/09
70413	Berklene/BenchCraft (Plant 5) (Comp)	Livingston, TN	05/22/09	05/19/09
70414	Berklene/BenchCraft, LLC (Plant 1, 2, 3, and 6) (Comp)	Morristown, TN	05/22/09	05/19/09
70415	Gerber Legendary Blades (Comp)	Portland, OR	05/22/09	05/19/09
70416	Lennox Industries, Inc.—North American Parts Center (Comp)	Urbandale, IA	05/22/09	05/19/09
70417	Milliken & Co.—Sharon Plant (State)	Abbeville, SC	05/22/09	05/19/09
70418	Pentair Water Pool and Spa (Wkrs)	Auburn, CA	05/22/09	05/19/09
70419	Goodyear Dunlop North America (Union)	Tonawanda, NY	05/22/09	05/19/09
70420	Milliken & Co.—Abbeville Plant (State)	Abbeville, SC	05/22/09	05/19/09
70421	Delphi Automotive Systems (Wkrs)	Warren, OH	05/22/09	05/19/09
70422	Wyoming Sawmills, Inc. (Wkrs)	Sheridan, WY	05/22/09	05/19/09
70423	Phillips Plating Corporation (Worker)	Phillips, WI	05/22/09	05/19/09
70424	Caterpillar Technical Center Building G (URS Washington Div) (Wkrs)	Mossville, IL	05/22/09	05/19/09
70425	UGN, Inc. (Wkrs)	Jackson, TN	05/22/09	05/18/09
70426	Timminco Corporation (Wkrs)	Aurora, CO	05/22/09	05/20/09
70427	Hewlett-Packard Company (Wkrs)	Carmel, IN	05/22/09	05/19/09

APPENDIX—Continued

[TAA petitions instituted between 5/18/09 and 5/22/09]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70428	Flextronics (Work)	Flextronics, CO	05/22/09	05/20/09
70429	Neocork Technologies (Wrks)	Conover, NC	05/22/09	05/18/09
70430	Unicco (State)	South Portland, ME	05/22/09	05/19/09
70431	Marlo Electronics (State)	Ft. Lauderdale, FL	05/22/09	05/19/09
70432	Bead Industries—Bead Chain Division (State)	Milford, CT	05/22/09	05/19/09
70433	lLevel by Weyerhaeuser—Buckhannon Mill (Comp)	Buckhannon, WV	05/22/09	05/18/09
70434	Flextronics America, LLC (Comp)	Charlotte, NC	05/22/09	05/18/09
70435	ANP Dimensional Lumber (Wrks)	Ogema, WI	05/22/09	05/19/09
70436	Dura Automotive Systems, Inc. (Comp)	Gordonsville, IN	05/22/09	05/20/09
70437	Circuit Science (State)	Plymouth, MN	05/22/09	05/20/09
70438	Durr Systems Inc. (Worker)	Plymouth, MI	05/22/09	05/18/09
70439	Signature Aluminum (Wrks)	Greenville, PA	05/22/09	05/20/09
70440	Lincoln Electric/Harris Products Group (Wrks)	Mason, OH	05/22/09	05/18/09
70441	Lionbridge (State)	Waltham, MA	05/22/09	05/20/09
70442	Pfizer (Wrks)	Terre Haute, IN	05/22/09	05/19/09
70443	Fleetwood Fixtures (Wrks)	Leesport, PA	05/22/09	05/18/09
70444	Richland Manufacturing (State)	Olney, IL	05/22/09	05/18/09
70445	Littelfuse, Inc. (State)	Arcola, IL	05/22/09	05/18/09
70446	Aida America Corporation (Comp)	Dayton, OH	05/22/09	05/21/09
70447	Paragon Store Fixtures, Inc. (Comp)	Big Lake, MN	05/22/09	05/18/09
70448	Jabil Billerica (Comp)	Billerica, MA	05/22/09	05/18/09
70449	Sumco Phoenix Corporation (State)	Phoenix, AZ	05/22/09	05/20/09
70450	Derby Cellular Products, Inc. (State)	Derby, CT	05/22/09	05/20/09
70451	CME, LLC (Comp)	Mt. Pleasant, MI	05/22/09	05/20/09
70452	International Paper (Comp)	Howell, MI	05/22/09	05/22/09
70453	Flextronics International (Wrks)	Elk Grove Village, IL	05/22/09	05/20/09
70454	Graphite Eng. & Sales (Worker)	Greenville, MI	05/22/09	05/18/09
70455	Astellas Pharma Manufacturing, Inc. (Wrks)	Grand Island, NY	05/22/09	05/19/09
70456	National Semiconductor (State)	5 Foden Rd, ME	05/22/09	05/20/09
70457	Multi-Plastics, Inc. (Comp)	Saegertown, PA	05/22/09	05/20/09
70458	April Steel Processing (Comp)	Dearborn, MI	05/22/09	05/20/09
70459	Icon Health and Fitness (State)	Logan, UT	05/22/09	05/20/09
70460	Delphi Steering (Union)	Saginaw, MI	05/22/09	05/20/09
70461	S and S Fire Apparatus (Wrks)	Fairmount, IN	05/22/09	05/19/09
70462	Windsor Forestry Tools (Company)	Milan, TN	05/22/09	05/20/09
70463	Zebra Technologies, Inc (Comp)	Vernon Hills, IL	05/22/09	05/19/09
70463A	Zebra Technologies, Inc (Comp)	Camarillo, CA	05/22/09	05/19/09
70464	Tab Direct Inc. (Worker)	Stafford, TX	05/22/09	05/19/09
70465	Ferraz Shawmut, LLC (Comp)	Newburyport, MA	05/22/09	05/19/09
70466	DMAX, LTD, LLC (Comp)	Dayton, OH	05/22/09	05/20/09
70467	Fortis Plastics, LLC (State)	Fort Smith, AR	05/22/09	05/20/09
70468	Bristol, Inc. (Comp)	Watertown, CT	05/22/09	05/20/09
70469	Datamatics Global Services, Inc. (Wrks)	Burlington, MA	05/22/09	05/18/09
70470	Vetter Corp., North American Power Division/ERM Thermal Tech. (Worker)	Ontario, NY	05/22/09	05/18/09
70471	SpringBoard Technology Corporation (Comp)	Springfield, MA	05/22/09	05/19/09
70472	Modus Link Corporation (Wrks)	Morrisville, NC	05/22/09	05/20/09
70473	USS Lorain Tubular Operations (USWA)	Lorain, OH	05/22/09	05/21/09
70474	Samuel Steel Pickling Co. (Worker)	Twinsburg, OH	05/22/09	05/18/09
70475	Foamade Industries, Inc. (Comp)	Auburn Hills, MI	05/22/09	05/18/09
70476	Rockford Corporation (Comp)	Walker, MI	05/22/09	05/21/09
70477	Dell USA LP (Worker)	Round Rock, TX	05/22/09	05/18/09
70478	Numonyx (Wrks)	Santa Clara, CA	05/22/09	05/21/09
70479	Air Products and Chemicals (Comp)	Easton, PA	05/22/09	05/21/09
70480	Auto Truck Transport (IAMAW)	Portland, OR	05/22/09	05/20/09
70481	Kaiser Aluminum (Comp)	Richmond, VA	05/22/09	05/21/09
70482	Source Providers, Inc. (State)	Lansing, MI	05/22/09	05/19/09
70483	Novellus Systems Inc (Wrks)	Boise, ID	05/22/09	05/21/09
70484	Virage Logic Corp. (Worker)	Hampton, NJ	05/22/09	05/20/09
70485	JJ Collins (State)	Charleston, IL	05/22/09	05/18/09
70486	Eclipse Manufacturing Company (Comp)	Pikeville, TN	05/22/09	05/21/09
70487	Greenbrier Rail Services (Worker)	Chicago Heights, IL	05/22/09	05/20/09
70488	Xenia Manufacturing (State)	Xenia, IL	05/22/09	05/18/09
70489	Pace Industries—Monroe City, Missouri Division (Comp)	Monroe City, MO	05/22/09	05/21/09
70490	Bright Wood Corporation (Comp)	Madras, OR	05/22/09	05/20/09
70491	Sipco, Inc. (Comp)	Meadville, PA	05/22/09	05/20/09
70492	Appleton Coated LLC (USWA)	Combined Locks, WI	05/22/09	05/20/09
70493	Hyatt Regency Albuquerque Downtown (Worker)	Albuquerque, NM	05/22/09	05/18/09
70494	Alliance Castings Co. LLC (Comp)	Alliance, OH	05/22/09	05/21/09
70495	Sipco, Inc. (Comp)	Saegertown, PA	05/22/09	05/20/09

APPENDIX—Continued

[TAA petitions instituted between 5/18/09 and 5/22/09]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
70496	Tektronix, Inc. (State)	Beaverton, OR	05/22/09	05/21/09
70497	Victor Insulators, Inc. (Comp)	Victor, NY	05/22/09	05/21/09
70498	Munksjo Paper, Inc. (Comp)	Fitchburg, MA	05/22/09	05/21/09
70499	Solutia, Inc. (State)	Greenwood, SC	05/22/09	05/19/09
70500	Method Electronics, Inc. (Comp)	Carthage, IL	05/22/09	05/21/09
70501	Cummins Power Generation (State)	Fridley, MN	05/22/09	05/18/09
70502	Spectrum Industrial Service (State)	Minneapolis, MN	05/22/09	05/18/09
70503	R and R Donnelley (State)	Long Prairie, MN	05/22/09	05/18/09
70504	Seagate Technology (State)	Bloomington, MN	05/22/09	05/18/09

[FR Doc. E9-18664 Filed 8-4-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-64,396]

Cerro Flow Products, Inc., Sauget, IL; Notice of Revised Determination on Reconsideration

On June 10, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 18, 2009 (74 FR 28956).

The initial investigation initiated on November 12, 2008, resulted in a negative determination issued on January 14, 2009, was based on the finding that imports of copper tubing did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign source occurred. The denial notice was published in the **Federal Register** on February 2, 2009 (74 FR 5871).

On reconsideration, the Department requested an additional list of customers of the subject firm and conducted a customer survey to determine whether imports of copper tubing negatively impacted employment at the subject firm.

The sample survey of the declining customers revealed that the customers increased their imports of copper tubing from January through October 2008 over the corresponding 2007 period.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Workers of Cerro Flow Products, Inc., Sauget, Illinois were previously certified eligible for TAA under TA-W-59,870. That certification expired on November 3, 2008.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Cerro Flow Products, Inc., Sauget, Illinois, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

“All workers of Cerro Flow Products, Inc., Sauget, Illinois, who became totally or partially separated from employment on or after November 4, 2008, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.”

Signed in Washington, DC this 17th day of July 2009.

Elliott S. Kushner,*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9-18650 Filed 8-4-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-70,098]

American Roller Bearing, Hiddenite, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 9, 2009, in response to a petition filed by a company official on behalf of workers of American Roller Bearing, Hiddenite, North Carolina.

The petitioning group of workers is covered by an earlier petition (TA-W-71,074) filed on June 3, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of July 2009.

Elliott S. Kushner,*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9-18654 Filed 8-4-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-70,102]

Fairchild Semiconductor, Signal Path Organization, South Portland, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on May 19, 2009, by a state workforce office on behalf of workers of Fairchild Semiconductor,

Signal Path Organization, South Portland, Maine.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

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

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-18652 Filed 8-4-09; 8:45 am]

BILLING CODE 4510-FN-P

NUCLEAR REGULATORY COMMISSION

[NRC-2008-0339; Docket No. 40-9067]

Uranerz Energy Corporation; Nichols Ranch In-Situ Recovery Project; New Source Material License Application; Notice of Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: The U.S. Nuclear Regulatory Commission.

ACTION: Notice of Intent (NOI).

SUMMARY: Uranerz Energy Corporation (Uranerz) submitted an application for a new source material license for the Nichols Ranch *In-Situ* Recovery (ISR) Project to be located in Campbell and Johnson Counties, Wyoming, approximately 46 miles south-southwest of Gillette, Wyoming and approximately 61 miles north-northeast of Casper, Wyoming. The application proposes the construction, operation, and decommissioning of ISR, also known as *in-situ* leach, facilities and restoration of the aquifer from which the uranium is being extracted. Uranerz submitted the application for the new source material license to the U.S. Nuclear Regulatory Commission (NRC) by a letter dated November 30, 2007. A notice of receipt and availability of the license application, including the Environmental Report (ER), and opportunity to request a hearing was published in the **Federal Register** on June 16, 2008 (73 FR 34052). The purpose of this notice of intent is to inform the public that the NRC will be preparing a site-specific Supplemental Environmental Impact Statement (SEIS) to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (ISR GEIS) for a new source material license for the Nichols Ranch ISR Project, as required by 10 CFR 51.26(d). In addition, as outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to use the environmental review process as reflected in 10 CFR

part 51 to coordinate compliance with Section 106 of the National Historic Preservation Act.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA or the environmental review process related to the Nichols Ranch ISR Project application, please contact the NRC Environmental Project Manager, Irene Yu, at (301) 415-1951 or irene.yu@nrc.gov.

Information and documents associated with the Nichols Ranch ISR Project, including the license application, are available for public review through our electronic reading room: <http://www.nrc.gov/reading-rm/adams.html> and on the NRC's Nichols Ranch Site Web page: <http://www.nrc.gov/info-finder/materials/uranium/apps-in-review/nichols-ranch-new-app-review.html>. Documents may also be obtained from NRC's Public Document Room at the U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

Uranerz submitted the application for the new source material license to the NRC for ISR facilities by a letter dated November 30, 2007. A notice of receipt and availability of the license application, including the ER, and opportunity to request a hearing was published in the **Federal Register** on June 16, 2008 (73 FR 34052). No requests for hearing were submitted.

Based on the anticipated efficiencies gained through the development of the ISR GEIS, the NRC originally planned to document this environmental evaluation in draft and final Environmental Assessments (EAs). However, during the development of the final ISR GEIS, NRC decided to prepare a SEIS that will tier off of the ISR GEIS for applications to license new ISR facilities. This environmental evaluation for the Nichols Ranch ISR Project will now be documented in draft and final SEISs instead of an EA. While NRC regulations do not require scoping under 10 CFR part 51 for SEISs, NRC staff met with Federal (Bureau of Land Management—Cheyenne, Casper, Buffalo; Bureau of Indian Affairs—Fort Washakie; Fish & Wildlife Service—Buffalo), State (Wyoming Department of Environmental Quality—Cheyenne, Sheridan; State Engineer's Office; Governor's Planning Office; State Historic Preservation Office) and local government agencies (Converse County Planning Department; Johnson County Commissioners' Office; City of Casper

Planning Office; Town of Wright) and public organizations (Buffalo Chamber of Commerce; Campbell County Economic Development Corporation; Wyoming Community Development Authority; Converse Area New Development Organization) in January of 2009 as part of a site visit to gather site-specific information to assist in the preparation of the Nichols Ranch ISR Project environmental review. NRC also contacted potentially interested tribes and local public interest groups via e-mail and telephone to gather additional information.

The NRC has begun evaluating the potential environmental impacts associated with the proposed ISR facility in parallel with the review of the license application. This environmental evaluation will be documented in draft and final SEISs in accordance with NRC's NEPA implementing regulations contained in 10 CFR part 51. The NRC is required by 10 CFR 51.20 (b)(8) to prepare an Environmental Impact Statement (EIS) or a supplement to an EIS for the issuance of a license to possess and use source material for uranium milling. The ISR GEIS and the site-specific SEIS fulfills this regulatory requirement. The purpose of the present notice is to inform the public that the NRC staff will prepare a site-specific supplement to the ISR GEIS (NUREG-1910) as part of the review of the application.

2.0 Nichols Ranch ISR Facilities

The facilities, if licensed, would include a central processing plant, satellite facility, accompanying wellfields, and ion exchange columns. The process involves the dissolution of the water-soluble uranium from the mineralized host sandstone rock by pumping oxidants (oxygen or hydrogen peroxide) and chemical compounds (sodium bicarbonate) through a series of production and extraction wells. The uranium-rich solution is transferred from the production wells to either the central processing plant or satellite facility for uranium concentration using ion exchange columns. Final processing is conducted in the central processing plant process to produce yellowcake for use in manufacturing commercial nuclear fuel for use in power reactors.

3.0 Alternatives To Be Evaluated

No-Action—The no-action alternative would be not to issue the license. Under this alternative, the NRC would not approve the license application for the proposed ISR facilities. This serves as a baseline for comparison.

Proposed Action—The proposed Federal action is to issue a license to use

or process source material at the proposed ISR facilities. The license review process analyzes the construction, operation, and decommissioning of ISR facilities and restoration of the aquifer from which the uranium is being extracted. The ISR facilities would be located in Campbell and Johnson Counties, Wyoming, approximately 46 miles south-southwest of Gillette, Wyoming and approximately 61 miles north-northeast of Casper, Wyoming. The applicant would be issued an NRC license under the provisions of 10 CFR part 40.

Other alternatives not listed here may be identified through the environmental review process.

4.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the SEIS:

- *Land Use*: Plans, policies, and controls;
- *Transportation*: Transportation modes, routes, quantities, and risk estimates;
- *Geology and Soils*: Physical geography, topography, geology, and soil characteristics;
- *Water Resources*: Surface and groundwater hydrology, water use and quality, and the potential for degradation;
- *Ecology*: Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;
- *Air Quality*: Meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
- *Noise*: Ambient, sources, and sensitive receptors;
- *Historical and Cultural Resources*: Historical, archaeological, and traditional cultural resources;
- *Visual and Scenic Resources*: Landscape characteristics, manmade features and viewshed;
- *Socioeconomics*: Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, and education;
- *Environmental Justice*: Potential disproportionately high and adverse impacts to minority and low-income populations;
- *Public and Occupational Health*: Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);
- *Waste Management*: Types of wastes expected to be generated, handled, and stored; and

- *Cumulative Effects*: Impacts from past, present, and reasonably foreseeable actions at and near the site(s).

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts.

5.0 The NEPA Process

The SEIS for the Nichols Ranch ISR Project will be prepared pursuant to the NRC's NEPA Regulations at 10 CFR part 51. The NRC will continue its environmental review of the application and as soon as practicable, the NRC and its contractor will prepare and publish a draft SEIS. NRC currently plans to have a 45-day public comment period for the draft SEIS. Availability of the draft SEIS and the dates of the public comment period will be announced in the **Federal Register** and the NRC Web site: <http://www.nrc.gov>. The final SEIS will include responses to public comments received on the draft SEIS.

Dated at Rockville, Maryland, this 28th day of July 2009.

For The Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9-18687 Filed 8-4-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2009-0339]

Notice of Publication of Draft Revision 2, NUREG-1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility" and Opportunity To Provide Comments

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of the proposed revision to NUREG-1520 and request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a revision to NUREG-1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility" for public comment.

DATES: Comments on these documents should be submitted by September 21, 2009. Comments received after that date will be considered to the extent practicable. To ensure efficient and complete comment resolution,

comments should include references to the section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC-2009-0339 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site [Regulations.gov](http://www.regulations.gov). Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2009-0339. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, *Mail Stop:* TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RDB at (301) 492-3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's

PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The Standard Review Plan (NUREG-1520) is available electronically under ADAMS Accession Number ML091470567.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2009-0339.

FOR FURTHER INFORMATION CONTACT:

Cintha Roman Cuevas, Chemical Engineer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 by telephone at 301-492-3224 or e-mail at cinthya.roman@nrc.gov.

SUPPLEMENTARY INFORMATION: The standard review plan (SRP) for the review of a license application for a fuel cycle facility (NUREG-1520) provides NRC staff guidance for reviewing and evaluating the safety, health, and environmental protection aspects of applications for licenses to possess and use SNM to produce nuclear reactor fuel. The licensing guidance revision is also intended to provide information needed to better risk-inform the preoperational readiness reviews. Specifically, items or features or aspects of the design identified during the licensing review as important, will be highlighted to verify compliance with specific commitments during the preoperational readiness reviews.

The SRP has been updated to improve and enhance the guidance by providing increased clarity and definition in specific areas of the licensing program and adding additional guidance in areas where information was lacking or not suitably addressed. This effort was focused on improving both the clarity, and also consistency, of the SRP, with the Agency positions that support compliance with current regulations. In addition, this revision has been reformatted and reorganized to improve the consistency within the document.

Dated at Rockville, MD, this 28th day of July 2009.

For the Nuclear Regulatory Commission.

Michael Tschiltz,

Deputy Director, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E9-18686 Filed 8-4-09; 8:45 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Notice of Public Hearing

September 3, 2009.

TIME AND DATE: 2 p.m., Thursday, September 3, 2009.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the Public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Thursday, August 27, 2009. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Thursday, August 27, 2009. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION:

Information on the hearing may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 218-0136, or via e-mail at Connie.Downs@opic.gov.

Dated: August 3, 2009.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E9-18836 Filed 8-3-09; 4:15 pm]

BILLING CODE 3210-01-P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Glenda Haendschke, Acting Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202-606-2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between June 1, 2009, and June 30, 2009. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year. The following Schedules are not codified in the code of Federal Regulations. These are agency specific exceptions.

Schedule A

No Schedule A authority to report.

Schedule B

No Schedule B authority to report.

Schedule C

The following Schedule C appointments were approved during June 2009.

Office of Management and Budget

BOGS90033 Deputy to the Associate Director for Legislative Affairs (House). Effective June 12, 2009.

Office of National Drug Control Policy

QQGS90001 Confidential Assistant to the Director. Effective June 10, 2009.

QQGS90002 Program Support Specialist (Office for Public Affairs). Effective June 11, 2009.

QQGS90003 Policy Analyst for State, Local, and Tribal Affairs. Effective June 25, 2009.

Office of Personnel Management

PMGS31334 Deputy Director for the Office of Congressional Relations. Effective June 2, 2009.

PMGS31335 Public Affairs Specialist for the Office of Communications and Public Liaison. Effective June 2, 2009.

- PMGS31346 Public Affairs Specialist for the Office of Communications and Public Liaison. Effective June 2, 2009.
- PMGS31347 Public and Congressional Affairs Specialist for the Office of Congressional Relations. Effective June 2, 2009.
- PMGS31348 Congressional Relations Officer, Office of Congressional Relations. Effective June 9, 2009.
- PMGS31350 Public Affairs Specialist for the Office of Communications and Public Liaison. Effective June 9, 2009.
- Department of State
- DSGS69942 Staff Assistant to the Secretary of State. Effective June 9, 2009.
- DSGS69945 Staff Assistant for European and Eurasian Affairs. Effective June 16, 2009.
- DSGS69946 Senior Advisor for Policy Planning Staff. Effective June 16, 2009.
- DSGS69947 Assistant Chief of Protocol (Visits). Effective June 16, 2009.
- DSGS69948 Deputy Assistant Secretary for Legislative and Intergovernmental Affairs. Effective June 16, 2009.
- DSGS69949 Legislative Management for Legislative and Intergovernmental Affairs. Effective June 16, 2009.
- Department of the Treasury
- DYGS00450 Special Assistant for Public Affairs. Effective June 5, 2009.
- DYGS00519 Financial Restructuring Specialist. Effective June 5, 2009.
- DYGS00520 Special Assistant to the Assistant Secretary (Economic Policy). Effective June 5, 2009.
- DYGS00497 Senior Advisor to the Assistant Secretary (Financial Institutions). Effective June 11, 2009.
- DYGS00435 Executive Assistant to the Secretary. Effective June 17, 2009.
- DYGS00372 Special Assistant for Financial Markets. Effective June 19, 2009.
- DYGS00516 Special Assistant to the Secretary. Effective June 30, 2009.
- Department of Defense
- DDGS17220 Special Assistant for South and Southeast Asia, for Defense (South and Southeast Asia). Effective June 3, 2009.
- DDGS17221 Special Assistant of Strategy for Defense. Effective June 3, 2009.
- DDGS17219 Special Assistant, Policy Support Division, for Defense (Legislative Affairs). Effective June 4, 2009.
- DDGS17224 Special Assistant for Defense (Middle East). Effective June 5, 2009.
- DDGS17226 Special Assistant for Defense (Western Hemisphere Affairs). Effective June 5, 2009.
- DDGS17222 Special Assistant for Communications, Office of the Assistant Secretary of Defense (Legislative Affairs). Effective June 8, 2009.
- DDGS17225 Special Assistant to the Assistant Secretary of Defense (Asian and Pacific Security Affairs). Effective June 8, 2009.
- DDGS17227 Special Assistant to the Assistant Secretary of Defense for Defense (Global Strategic Affairs). Effective June 8, 2009.
- DDGS17228 Special Assistant to the Deputy Assistant Secretary for Defense (Russia, Ukraine, and Eurasia). Effective June 8, 2009.
- DDGS17229 Special Assistant to the Deputy Assistant Secretary of Defense (Special Operations/Low Intensity Conflict and Interdependent Capabilities). Effective June 10, 2009.
- DDGS17223 Special Assistant to the Assistant Secretary of Defense (International Security Affairs). Effective June 11, 2009.
- DDGS17230 Advance Officer for the Special Assistant for Defense. Effective June 11, 2009.
- DDGS17232 Special Assistant to the Deputy Assistant Secretary for Defense (East Asia). Effective June 16, 2009.
- DDGS17233 Special Assistant to the Principal Deputy Under Secretary of Defense for Policy. Effective June 19, 2009.
- DDGS17234 Special Assistant to the Deputy Assistant Secretary of Defense (Detainee Affairs). Effective June 23, 2009.
- DDGS17231 Director, Advance Office to the Special Assistant of Defense. Effective June 25, 2009.
- Department of Justice
- DJGS00512 Counsel to the Assistant Attorney General Civil Division. Effective June 11, 2009.
- DJGS00515 Counselor to the Assistant Attorney General, Office of Justice Programs. Effective June 11, 2009.
- DJGS00516 Counsel to the Assistant Attorney General Civil Division. Effective June 11, 2009.
- DJGS00113 Senior Counsel to the Director, for Community Relations Service. Effective June 23, 2009.
- DJGS00090 Chief of Staff and Counsel to the Assistant Attorney General. Effective June 25, 2009.
- DJGS00238 Press Assistant to the Director, Office of Public Affairs. Effective June 25, 2009.
- DJGS00297 Counsel to the Assistant Attorney General (Civil Rights). Effective June 25, 2009.
- DJGS00522 Associate Director, Office of Intergovernmental and Public Liaison. Effective June 25, 2009.
- Department of Homeland Security
- DMGS00736 Director of Strategic Communications for Public Affairs. Effective June 4, 2009.
- DMGS00821 Traveling Press Secretary of External Affairs and Communications. Effective June 4, 2009.
- DMGS00656 Director of Speechwriting for Public Affairs. Effective June 10, 2009.
- DMGS00788 Counselor to the Principal Deputy General Counsel. Effective June 10, 2009.
- DMGS00789 Counselor to the Associate General Counsel for General Law. Effective June 10, 2009.
- DMGS00794 Assistant for Special Projects. Effective June 10, 2009.
- DMGS00802 Special Assistant to the Assistant Secretary for Policy. Effective June 10, 2009.
- DMGS00805 Special Assistant to the Director, Office of Counter Narcotics Enforcement. Effective June 10, 2009.
- DMGS00806 Confidential Assistant to the General Counsel. Effective June 10, 2009.
- DMGS00810 Special Assistant to the Executive Director, Homeland Security Advisory Committees. Effective June 10, 2009.
- DMGS00812 Press Assistant for Public Affairs. Effective June 10, 2009.
- DMGS00814 Confidential Assistant to the Assistant Secretary, Immigration and Customs Enforcement. Effective June 10, 2009.
- DMGS00822 Counselor to the Administrator for Federal Emergency Management Agency. Effective June 10, 2009.
- DMGS00674 Special Assistant for International Affairs. Effective June 15, 2009.
- DMGS00779 Confidential Assistant for Policy Development. Effective June 15, 2009.
- DMGS00825 Advisor to the Administrator for Federal Emergency Management Agency. Effective June 15, 2009.
- DMGS00437 Counselor to the Director, United States Citizenship and Immigration Services. Effective June 16, 2009.
- DMGS00815 Scheduling and Advance Assistant of Scheduling and Protocol Coordination. Effective June 16, 2009.
- DMGS00818 Special Assistant. Effective June 16, 2009.
- DMGS00826 Special Assistant. Effective June 16, 2009.
- DMGS00827 Special Assistant. Effective June 16, 2009.

- DMGS00724 Executive Director, Homeland Security Advisory Committees, for Policy. Effective June 17, 2009.
- DMGS00688 Special Advisor to the Assistant Secretary for Legislative Affairs. Effective June 19, 2009.
- DMGS00824 Advisor for Policy. Effective June 19, 2009.
- DMGS00760 Director of Intergovernmental Affairs. Effective June 24, 2009.
- DMGS00798 Program Specialist. Effective June 24, 2009.
- DMGS00809 Deputy Director of Legislative Affairs to the Assistant Secretary, Immigration and Customs Enforcement. Effective June 24, 2009.
- DMGS00823 Chief, Office of Citizenship, United States Citizenship and Immigration Services. Effective June 24, 2009.
- DMGS00829 Special Assistant for International Affairs. Effective June 24, 2009.
- DMGS00830 Executive Assistant to the Commissioner, United States Customs and Border Protection. Effective June 24, 2009.
- DMGS00831 Senior Advisor, Disability Issues of External Affairs and Communications. Effective June 24, 2009.
- Department of the Interior
- DIGS01164 Special Assistant to the Assistant Secretary, Land and Minerals Management. Effective June 9, 2009.
- DIGS01165 Senior Advisor to the Assistant Secretary of Indian Affairs. Effective June 19, 2009.
- DIGS00905 Senior Counselor to the Solicitor. Effective June 24, 2009.
- Department of Agriculture
- DAGS00145 Confidential Assistant to the Director of Communications. Effective June 1, 2009.
- DAGS00130 Special Assistant for Civil Rights. Effective June 9, 2009.
- DAGS00149 Staff Assistant for Risk Management. Effective June 16, 2009.
- DAGS00150 Senior Advisor for Foreign Agricultural Service. Effective June 17, 2009.
- DAGS00151 Confidential Assistant to the Administrator. Effective June 19, 2009.
- DAGS00152 Confidential Assistant for Administration. Effective June 25, 2009.
- DAGS00153 Confidential Assistant for Administration. Effective June 26, 2009.
- DAGS00155 Director, Intergovernmental Affairs for Congressional Relations. Effective June 26, 2009.
- DAGS00156 Deputy Director, Intergovernmental Affairs for Congressional Relations. Effective June 26, 2009.
- Department of Commerce
- DCGS00476 Deputy Director, Executive Secretariat. Effective June 4, 2009.
- DCGS00470 Confidential Assistant to the Director. Effective June 9, 2009.
- DCGS60423 Senior Policy Advisor for Intellectual Property and Director of the United States Patent and Trademark Office. Effective June 11, 2009.
- DCGS00268 Special Assistant. Effective June 12, 2009.
- DCGS00181 Special Advisor for Communications and Information. Effective June 15, 2009.
- DCGS00359 New Media Specialist for National Telecommunications and Information Administration. Effective June 19, 2009.
- DCGS00620 Director of Legislative Affairs, International Trade Administration. Effective June 19, 2009.
- DCGS00667 Senior Policy Advisor for International Trade. Effective June 22, 2009.
- DCGS00154 Advance Specialist to the Director of Advance. Effective June 30, 2009.
- DCGS00638 Confidential Assistant for National Telecommunications and Information Administration. Effective June 30, 2009.
- DCGS60544 Chief of Staff for International Trade Administration. Effective June 30, 2009.
- Department of Labor
- DLGS60093 Special Assistant of Scheduling and Advance. Effective June 4, 2009.
- DLGS00166 Staff Assistant to the Chief Economist. Effective June 5, 2009.
- DLGS00108 Special Assistant of Scheduling and Advance. Effective June 9, 2009.
- DLGS60273 Special Assistant for Administration and Management. Effective June 18, 2009.
- Department of Health and Human Services
- DHGS60345 Director of Public Affairs for Children and Families. Effective June 3, 2009.
- DHGS60031 Confidential Assistant to the Assistant Secretary for Public Affairs. Effective June 9, 2009.
- DHGS60111 Confidential Assistant to the Assistant Secretary for Public Affairs. Effective June 9, 2009.
- DHGS60063 Confidential Assistant to the Director for Public Affairs. Effective June 17, 2009.
- DHGS60436 Associate Commissioner for Children and Families. Effective June 17, 2009.
- DHGS60540 Confidential Assistant to the Assistant Secretary for Health. Effective June 17, 2009.
- DHGS60581 Special Assistant to the National Health Information Technology Coordinator. Effective June 17, 2009.
- DHGS60680 Special Assistant to the Director, Office of Legislation. Effective June 17, 2009.
- DHGS60010 Confidential Assistant for the Director, Center for Faith Based and Community Initiatives. Effective June 18, 2009.
- DHGS60344 Confidential Assistant for Legislation (Health Policy). Effective June 22, 2009.
- DHGS60580 Special Assistant to the National Coordinator for Health Information Technology. Effective June 22, 2009.
- Department of Education
- DBGS00202 Deputy Assistant Secretary for Enforcement for Civil Rights. Effective June 2, 2009.
- DBGS00442 Confidential Assistant for Civil Rights. Effective June 2, 2009.
- DBGS00303 Director, White House Initiative on Educational Excellence for Hispanic Americans. Effective June 3, 2009.
- DBGS00359 Special Assistant for Civil Rights. Effective June 4, 2009.
- DBGS00404 Special Assistant to the General Counsel. Effective June 4, 2009.
- DBGS00560 Special Assistant for Planning, Evaluation, and Policy Development. Effective June 4, 2009.
- DBGS00612 Special Assistant to the General Counsel. Effective June 4, 2009.
- DBGS00676 Confidential Assistant to the Executive Administrator. Effective June 4, 2009.
- DBGS60164 Confidential Assistant to the Deputy Under Secretary. Effective June 4, 2009.
- DBGS00219 Special Assistant to the Deputy Under Secretary. Effective June 9, 2009.
- DBGS00661 Confidential Assistant to the White House Liaison. Effective June 9, 2009.
- DBGS00569 Special Assistant to the Director, Academic Improvement and Teacher Quality Programs. Effective June 11, 2009.
- DBGS00226 Confidential Assistant to the Director, Faith-Based and Community Initiatives Center. Effective June 18, 2009.
- DBGS00289 Assistant Deputy Secretary for Safe and Drug-Free Schools of Education. Effective June 18, 2009.

DBGS00415 Confidential Assistant for Planning, Evaluation, and Policy Development. Effective June 18, 2009.

DBGS00570 Confidential Assistant for Intergovernmental Affairs. Effective June 18, 2009.

DBGS00678 Special Assistant for Planning, Evaluation, and Policy Development. Effective June 18, 2009.

DBGS00609 Special Assistant to the Under Secretary. Effective June 22, 2009.

DBGS00663 Special Assistant, Office of Communications and Outreach. Effective June 23, 2009.

DBGS00671 Chief of Staff for Innovation and Improvement. Effective June 23, 2009.

DBGS00226 Confidential Assistant. Effective June 26, 2009.

DBGS00674 Confidential Assistant. Effective June 26, 2009.

DBGS00679 Special Assistant for Faith-Based and Community Initiatives Center. Effective June 26, 2009.

Environmental Protection Agency

EPGS006028 Deputy Associate Administrator for Congressional and Intergovernmental Relations. Effective June 4, 2009.

Council on Environmental Quality

EQGS09007 Special Assistant to the Associate Director for Climate Change for the Chairman (Council on Environmental Quality). Effective June 1, 2009.

United States Tax Court

JCGS60070 Trial Clerk to the Chief Judge. Effective June 26, 2009.

Securities and Exchange Commission

SEOT60062 Confidential Assistant to a Commissioner. Effective June 11, 2009.

SEOT65001 Executive Staff Assistant. Effective June 11, 2009.

Department of Energy

DEGS00750 Special Assistant. Effective June 2, 2009.

DEGS00751 New Media Specialist. Effective June 2, 2009.

DEGS00752 Special Assistant to the Deputy Secretary of Energy. Effective June 2, 2009.

DEGS00753 Special Assistant to the Under Secretary for Science. Effective June 2, 2009.

DEGS00754 Public Affairs Coordinator. Effective June 4, 2009.

DEGS00756 Senior Counsel. Effective June 16, 2009.

DEGS00755 Special Advisor to the Under Secretary for Science. Effective June 17, 2009.

DEGS00758 Special Assistant to the General Counsel. Effective June 17, 2009.

DEGS00757 Senior Advisor to the Under Secretary. Effective June 19, 2009.

DEGS00759 Special Assistant for Policy and International Affairs. Effective June 19, 2009.

DEGS00760 Special Assistant and Scheduler to the Director, Office of Scheduling and Advance. Effective June 25, 2009.

DEGS00761 Special Assistant to the Assistant Secretary (Energy Efficiency and Renewable Energy). Effective June 25, 2009.

Small Business Administration

SBGS00601 Associate Administrator for Field Operations. Effective June 19, 2009.

General Services Administration

GS GS60103 Special Assistant. Effective June 11, 2009.

Export-Import Bank

EBGS45409 Special Assistant to the President and Chairman. Effective June 17, 2009.

National Credit Union Administration

CUOT60009 Staff Assistant to the National Credit Union Administration Board. Effective June 26, 2009.

Consumer Product Safety Commission

PSGS00023 Special Assistant (Legal) to the Consumer Product Safety Commission. Effective June 26, 2009.

PSGS07318 Special Assistant to a Commissioner. Effective June 26, 2009.

Commodity Futures Trading Commission

CTOT00098 Director of Legislative Affairs. Effective June 26, 2009.

CTOT00099 Director of Public Affairs. Effective June 26, 2009.

Department of Housing and Urban Development

DUGS60415 Senior Speechwriter for Public Affairs. Effective June 1, 2009.

DUGS60502 Special Policy Advisor for Public and Indian Housing. Effective June 3, 2009.

DUGS60603 Staff Assistant for Policy Development Research. Effective June 5, 2009.

DUGS60519 Special Assistant for Public and Indian Housing. Effective June 8, 2009.

DUGS60597 Deputy Chief of Staff for Policy and Programs. Effective June 8, 2009.

DUGS60520 Special Assistant for Public and Indian Housing. Effective June 9, 2009.

DUGS60179 Advance Coordinator for Executive Scheduling. Effective June 11, 2009.

DUGS60182 Special Assistant for Public and Indian Housing. Effective June 17, 2009.

DUGS60410 Special Assistant to the General Counsel. Effective June 17, 2009.

Department of Transportation

DTGS60173 Director of Congressional Affairs. Effective June 23, 2009.

DTGS60372 Deputy Assistant Secretary for Governmental Affairs. Effective June 23, 2009.

DTGS60127 Deputy Assistant Secretary of Management and Budget. Effective June 25, 2009.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9-18679 Filed 8-4-09; 8:45 am]

BILLING CODE 6325-39-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009-35 and CP2009-54; Order No. 259]

Priority Mail

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 15 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 August 6, 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, at 202-789-6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

On July 24, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*

to add Priority Mail Contract 15 to the Competitive Product List.¹ The Postal Service asserts that Priority Mail Contract 15 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). The Postal Service states that prices and classification underlying this contract are supported by Governors’ Decision No. 09–6 in Docket No. M2009–25. *Id.* at 1. The Request has been assigned Docket No. MC2009–35.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–54.

Request. The Request includes (1) a redacted version of the contract; (2) requested changes in the Mail Classification Schedule product list; (3) a Statement of Supporting Justification as required by 39 CFR 3020.32; and (4) certification of compliance with 39 U.S.C. 3633(a).² It seeks to add Priority Mail Contract 15 to the Competitive Product List. *Id.* at 1–2.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. *Id.*, Attachment C. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 15 is included with the Request. The contract will become effective on the day that the Commission provides all necessary regulatory approvals. It is terminable upon 30 days’ notice by either party, but could continue for 3 years without modification. *See id.*, Attachment A. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a)(2). *See id.*, Attachment D.

¹ Request of the United States Postal Service to Add Priority Mail Contract 15 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

² Attachment A to the Request is the redacted version of the contract. Attachment B shows the requested changes to the Mail Classification Schedule product list. Attachment C provides a statement of supporting justification for this Request. Attachment D provides the certification of compliance with 39 U.S.C. 3633(a).

The noticed contract provides customized service and pricing for eligible items shipped by the shipper. The shipper must pay postage using an approved permit postage payment system. Annual price adjustments will be applied to the shipper’s “Priority Mail Saver Letters.” A party may not assign the agreement without the other party’s consent, which may not be unreasonably withheld.

The Postal Service filed much of the supporting materials, including the specific Priority Mail Contract 15, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer’s name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2–3.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–35 and CP2009–54 for consideration of the request pertaining to the proposed Priority Mail Contract 15 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service’s filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020 subpart B. Comments are due no later than August 6, 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 these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2009–35 and CP2009–54 for consideration of the matter raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons on these proceedings are due no later than August 6, 2009.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued: July 29, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–18767 Filed 8–4–09; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–36 and CP2009–55; Order No. 260]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 16 to the Competitive Product List. The Postal Service also has filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due August 6, 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, at 202–789–6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

On July 24, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 16 to the Competitive Product List.¹ The Postal Service asserts that Priority Mail Contract 16 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). The Postal Service states that prices and classification underlying the contract are supported by Governors’ Decision No. 09–6 in Docket No. MC2009–25. *Id.* at 1. The Request has been assigned Docket No. MC2009–36.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–55.

Request. The Request includes (1) a redacted version of the contract; (2)

¹ Request of the United States Postal Service to Add Priority Mail Contract 16 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

requested changes in the Mail Classification Schedule product list; (3) a Statement of Supporting Justification as required by 39 CFR 3020.32; and (4) certification of compliance with 39 U.S.C. 3633(a).² Substantively, the Request seeks to add Priority Mail Contract 16 to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment C. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 16 is included with the Request. The contract will become effective on the day that the Commission provides all necessary regulatory approvals. It is terminable upon 30 days' notice by a party, but could continue for 1 year without modification. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a)(1). *See id.*, Attachment D.

The Postal Service will provide the shipper with customized pricing for eligible Priority Mail items shipped by the shipper, as well as Priority Mail packaging and labels. A party may not assign the agreement without the other party's consent, which may not be unreasonably withheld.

The Postal Service filed much of the supporting materials, including the specific Priority Mail Contract 16, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2–3.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–36 and CP2009–55 for consideration of the Request pertaining to the proposed Priority Mail Contract 16 product and the related contract, respectively. In keeping with practice,

² Attachment A to the Request is the redacted version of the contract. Attachment B shows the requested changes to the Mail Classification Schedule product list. Attachment C provides a statement of supporting justification for this Request. Attachment D provides the certification of compliance with 39 U.S.C. 3633(a).

these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020 subpart B. Comments are due no later than August 6, 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 these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2009–36 and CP2009–55 for consideration of the matter raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than August 6, 2009.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued: July 29, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–18768 Filed 8–4–09; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–37 and CP2009–56; Order No. 261]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service Request to add Priority Mail Contract 17 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 August 6, 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,

at 202–789–6829 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

On July 24, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 17 to the Competitive Product List.¹ The Postal Service asserts that Priority Mail Contract 17 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). The Postal Service states that prices and classification underlying this contract are supported by Governors' Decision No. 09–6 in Docket No. MC2009–25. *Id.* at 1. The Request has been assigned Docket No. MC2009–37.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–56.

Request. The Request includes (1) a redacted version of the contract; (2) requested changes in the Mail Classification Schedule product list; (3) a Statement of Supporting Justification as required by 39 CFR 3020.32; and (4) certification of compliance with 39 U.S.C. 3633(a).² Substantively, the Request seeks to add Priority Mail Contract 17 to the Competitive Product List. *Id.* at 1–2.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment C. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products

¹ Request of the United States Postal Service to Add Priority Mail Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

² Attachment A to the Request is the redacted version of the contract. Attachment B shows the requested changes to the Mail Classification Schedule product list. Attachment C provides a statement of supporting justification for this Request. Attachment D provides the certification of compliance with 39 U.S.C. 3633(a).

by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 17 is included with the Request. The contract will become effective on the day that the Commission provides all necessary regulatory approvals. It is terminable upon 30 days' notice by either party, but could continue for 3 years without modification. *See id.*, Attachment A. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a)(1). *See id.*, Attachment D.

The Postal Service will provide the shipper with customized pricing for eligible Priority Mail items shipped by the shipper, as well as Priority Mail packaging. The shipper will manifest pieces eligible for customized pricing, using a separate permit number to ship such pieces, and will begin using the Electronic Verification System (eVS) for shipments of such pieces. Annual price adjustments will be applied to shipper's eligible mailpieces. A party may not assign the agreement without the other party's consent, which may not be unreasonably withheld.

The Postal Service filed much of the supporting materials, including the specific Priority Mail Contract 17, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2–3.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–37 and CP2009–56 for consideration of the Request pertaining to the proposed Priority Mail Contract 17 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than August 6, 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 these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2009–37 and CP2009–56 for consideration of the matter raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than August 6, 2009.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued: July 29, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–18769 Filed 8–4–09; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60399; File No. SR–NYSE–2009–72]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 476A To Add Rule 104(a)(1)(A) to Its “List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A”

July 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that, on July 22, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 Rule 476A to add Rule 104(a)(1)(A) to its “List of Exchange Rule Violations and Fines Applicable

Thereto Pursuant to Rule 476A.”³ The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 476A to add Rule 104(a)(1)(A) to its “List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A.”

Current NYSE Rule 104

Current NYSE Rule 104 requires, *inter alia*, Designated Market Makers (“DMMs”) registered in one or more securities traded on the Exchange to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market, insofar as reasonably practicable, by contributing liquidity when lack of price continuity and depth, or disparity between supply and demand, exists or is reasonably to be anticipated.⁴ This includes an affirmative obligation to provide quotes at the National Best Bid or Offer a minimum percentage of the trading day (“Affirmative Quote Obligation”).

The DMMs' Affirmative Quote Obligation is set forth in NYSE Rule 104(a)(1)(A). Section (a)(1)(A) of Rule 104 requires DMMs to maintain a bid or an offer at the National Best Bid and National Best Offer (“inside”) at least 10% of the trading day for securities in which the DMM unit is registered with an average daily volume on the Exchange of less than one million

³ NYSE Amex LLC has submitted a companion rule filing proposing corresponding amendments to NYSE Amex Disciplinary Rule 476A. *See* SR–NYSE–Amex–2009–47, formally submitted July 22, 2009.

⁴ *See* NYSE Rule 104(f)(ii).

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b–4.

shares, and at least 5% for securities in which the DMM unit is registered with an average daily volume equal to or greater than one million shares. Time at the inside is calculated as the average percentage of time the DMM unit has a bid or offer at the inside. In calculating whether the DMM is meeting the 10% and 5% requirement, credit may be given for executions for the liquidity provided by the DMM.⁵ DMM Reserve or other hidden orders are not included in the inside quote calculations.

Proposed Rule Change

As noted above, the Exchange proposes to add NYSE Rule 104(a)(1)(A) to its "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A."

Under the Exchange's Minor Rule Violation Plan, NYSE Rule 476A, the Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. Fines provide a meaningful sanction for rule violations when the initiation of a disciplinary procedure under Rule 476 is unwarranted given the facts and circumstances of the violation, or when the violation calls for a stronger response informal discipline than an admonition letter.⁶

Currently, when a DMM fails to meet the affirmative quote obligations set forth in Rule 104(a)(1)(A), the Exchange's only remedy is to bring a formal disciplinary proceeding pursuant to Rule 476. This is the case whether or not the DMM has failed to meet its obligations once or many times and regardless of whether the DMM made a technical error or an intentional one.

The Exchange believes that the current regulatory approach for dealing with DMM quoting obligations is too inflexible. The Exchange recognizes that DMMs may, for many reasons, fail to

meet their affirmative quote obligations as prescribed under Rule 104(a)(1)(A). In some circumstances, formal disciplinary measures in accordance with Rule 476 are warranted. However, in other instances such a proceeding may be unwarranted, and the Exchange is of the view that the addition of this Rule to the list of rule violations and fines under Rule 476A will provide a more flexible and appropriate tool to enforce potential failure by DMMs to adhere to the quoting requirements set forth in Rule 104(a)(1)(A), while preserving the Exchange's discretion to seek formal discipline under the appropriate circumstances.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Act,⁷ in that they are 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 proposed rule changes also further the objectives of Section 6(b)(6), in that they provide for appropriate discipline for violations of principles of the Act, the rules and regulations thereunder, and Exchange rules and regulations.

The Exchange believes that the proposed rule changes will provide the Exchange with greater regulatory flexibility to enforce the DMM quoting requirements set forth in NYSE Rule 104(a)(1)(A) in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, 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) of the Act and Rule 19b-4(f)(6)(iii) 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-NYSE-2009-72 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-NYSE-2009-72. 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

⁵ When a DMM sends an s-quote to establish a new best bid or best offer, the DMM's s-quote may end up executing immediately against dark liquidity inside the spread rather than being quoted. Absent rule relief, the s-quote would not be counted toward the DMM Unit's quoting requirement, even though the DMM's intent was to add liquidity to the market, and even though the s-quote in fact resulted in an execution. To address this, the Exchange added a provision to NYSE Rule 104 that allows the Exchange to give credit to a DMM unit that did not meet its quoting requirement as a result of the continuous immediate execution of its s-quotes.

⁶ The Exchange's Minor Rule Violation Plan, Rule 476A, was originally adopted by the Exchange and approved by the Commission in 1985. See Securities Exchange Act Release No. 34-[sic]21688 (January 25, 1985), 50 FR 5025-01 (February 5, 1985). It has been amended numerous times since its adoption.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-NYSE-2009-72 and should be submitted on or before August 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18665 Filed 8-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60396; File No. SR-NYSE-2009-73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Operative Date of NYSE Rule 92(c)(3) From July 31, 2009 to December 31, 2009

July 30, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 24, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 self-regulatory organization. The Exchange filed the proposed rule change pursuant to

Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders it effective 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 extend the operative date of NYSE Rule 92(c)(3) from July 31, 2009 to December 31, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the delayed operative date of NYSE Rule 92(c)(3) from July 31, 2009 to December 31, 2009. The Exchange believes that this extension will provide the time necessary for the Exchange and the Financial Industry Regulatory Authority, Inc. ("FINRA") to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.

Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the Exchange.⁶ These amendments were filed in part to begin the harmonization process between Rule 92 and FINRA's Manning Rule.⁷ In connection with those amendments, the Exchange

implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits Exchange member organizations to submit riskless principal orders to the Exchange, but requires them to submit to a designated Exchange database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the Exchange informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the Exchange's Front End Systemic Capture ("FESC") database linking the execution of the riskless principal order on the Exchange to the specific underlying orders. The information provided must be sufficient for both member firms and the Exchange to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the Exchange and member organizations to make certain changes to their trading and order management systems, the NYSE filed for immediate effectiveness to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.⁸ The Exchange filed for additional extensions of the operative date of Rule 92(c)(3), the most recent of which was an extension to July 31, 2009.⁹

Request for Extension¹⁰

FINRA and the Exchange have been working diligently on fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions. However, because of the complexity of the existing customer order protection rules, including the need for input from industry participants as well as Commission

⁸ See Securities Exchange Act Release No. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007), SR-NYSE-2007-114.

⁹ See Securities Exchange Act Release Nos. 57682 (Apr. 17, 2008), 73 FR 22193 (Apr. 24, 2008) (SR-NYSE-2008-29) and 59621 (Mar. 23, 2009), 74 FR 14179 (Mar. 30, 2009) (SR-NYSE-2009-30).

¹⁰ NYSE Amex LLC has filed a companion rule filing to conform its Equities Rules to the changes proposed in this filing. See SR-NYSEAmex-2009-48, formally submitted July 24, 2009.

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 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).

⁶ See Securities Exchange Act Release No. 34-56017 (July 5, 2007), 72 FR 38110 (July 12, 2007), SR-NYSE-2007-21.

⁷ See NASD Rule 2111 and IM-2110-2.

approval, the Exchange and FINRA will not have harmonized their respective customer order protection rules by the current July 31, 2009 date for the implementation of the FESC riskless principal reporting.

The Exchange notes that it has agreed with FINRA to pursue efforts to harmonize customer order protection rules. As authorized by their respective Boards, FINRA and NYSE Regulation, Inc. ("NYSE Regulation") have each published a Regulatory Notice/Information Memo that solicits comments from their respective member participants on the proposed harmonized approach to customer order protection.¹¹ Because industry participants need to code their trading systems to comply with customer order protection rules, the Exchange believes that industry input is vital to ensuring that the approach to customer order protection both meets regulatory needs of protecting customer orders, but is also feasible technologically.

Both FINRA and NYSE Regulation have received comments from the public on the Regulatory Notice and Information Memo, including comments from industry forums such as SIFMA and FIF. The comments have generally supported efforts to harmonize the FINRA and NYSE rules. Among issues raised in the comment letters, however, is the concern that FINRA and NYSE have a harmonized approach for reporting riskless principal transactions. In addition, commenters note the need for an implementation period to develop any technology that would be needed to comply with the proposed reporting standard. FINRA and NYSE Regulation continue to work together to develop such a harmonized approach to reporting riskless principal trades.

The Exchange continues to believe that pending full harmonization of the respective customer order protection rules, it would be premature to require firms to meet the current Rule 92(c)(3) FESC reporting requirements.¹² Indeed, having differing reporting standards for riskless principal orders would be inconsistent with the overall goal of the harmonization process.

Accordingly, to provide the Exchange and FINRA the time necessary to develop a harmonized rule set that would apply across their respective marketplaces, including a harmonized approach to riskless principal trade reporting, the Exchange is proposing to

delay the operative date for NYSE Rule 92(c)(3) from July 31, 2009 to December 31, 2009.

Pending the harmonization of the two rules, the Exchange will continue to require that, as of the date each member organization implements riskless principal routing, the member organization have in place systems and controls that allow them to easily match and tie riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request. To make clear that this requirement continues, the Exchange proposes to amend supplementary material .95 to Rule 92 to specifically provide that the Rule 92(c)(3) reporting requirements are suspended until December 31, 2009 and that member organizations are required to have in place such systems and controls relating to their riskless principal executions on the Exchange. Moreover, the Exchange will coordinate with FINRA to examine for compliance with the rule requirements for those firms that engage in riskless principal trading under Rule 92(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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 extension provides the Exchange and FINRA the time necessary to develop a harmonized rule concerning customer order protection that will enable member organizations to participate in the national market system without unnecessary impediments.

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 does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

The Exchange has requested the Commission to waive the 30-day operative delay so that the Exchange can extend the operative date of NYSE Rule 92(c)(3) without interruption. The Commission hereby grants the Exchange's request and believes such waiver is consistent with the protection of investors and the public interest.¹⁷ 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission 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.

¹⁷ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ See NYSE Regulation Information Memo 09-13 (March 12, 2009); FINRA Regulatory Notice 09-15 (March 12, 2009).

¹² The Exchange notes that it would also need to make technological changes to implement the proposed FESC reporting solution for Rule 92(c)(3).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2009-73 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-NYSE-2009-73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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 Number SR-NYSE-2009-73 and should be submitted on or before August 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60397; File No. SR-NYSEAmex-2009-48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Extending the Operative Date of NYSE Amex Equities Rule 92(c)(3) from July 31, 2009 to December 31, 2009

July 30, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on July 24, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders it effective 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 extend the operative date of NYSE Amex Equities Rule 92(c)(3) from July 31, 2009 to December 31, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the delayed operative date of NYSE Amex Equities Rule 92(c)(3) from July 31, 2009 to December 31, 2009. The Exchange believes that this extension will provide the time necessary for the Exchange, the New York Stock Exchange LLC ("NYSE"), and the Financial Industry Regulatory Authority, Inc. ("FINRA") to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.⁶

Merger Background

As described more fully in a related rule filing,⁷ NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext and was renamed NYSE Amex LLC ("NYSE Amex" or the "Exchange"), and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act").⁸ The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation"). The Exchange's equity trading systems and facilities at 11 Wall Street (the "NYSE Amex Trading Systems") are operated by the NYSE on behalf of the Exchange.⁹

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE

⁶ See SR-NYSE-2009-73, formally submitted on July 24, 2009.

⁷ See Securities Exchange Act Release No. 58673 (Sept. 29, 2008), 73 FR 57707 (Oct. 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the Merger).

⁸ 15 U.S.C. 78f.

⁹ See Securities Exchange Act Release No. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR-Amex-2008-63) (approving the Equities Relocation).

¹⁸ 17 CFR 200.30-3(a)(12).

Amex Trading Systems.¹⁰ The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Rule 92 Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the NYSE.¹¹ These amendments were filed in part to begin the harmonization process between NYSE Rule 92 and FINRA's Manning Rule.¹² In connection with those amendments, the NYSE implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits NYSE member organizations to submit riskless principal orders to the NYSE, but requires them to submit to a designated NYSE database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the NYSE informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the NYSE's Front End Systemic Capture ("FESC") database linking the execution of the riskless principal order on the NYSE to the specific underlying orders. The information provided must be sufficient for both member firms and the NYSE to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the NYSE and member organizations to make certain changes to their trading and order management systems, the NYSE filed for immediate effectiveness to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3)

requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.¹³ The NYSE filed for additional extensions of the operative date of NYSE Rule 92(c)(3) to March 31, 2009 and July 31, 2009.¹⁴ Because NYSE Amex adopted NYSE Rule 92 in its then current form, the delayed operative date of March 31, 2009 for the NYSE Rule 92(c)(3) reporting requirements also applied for NYSE Amex Equities Rule 92(c)(3) reporting requirements and NYSE Amex filed for an extension of the operative date of Rule 92(c)(3) from March 31, 2009 to July 31, 2009.¹⁵

Request for Extension

FINRA, NYSE, and the Exchange have been working diligently on fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions. However, because of the complexity of the existing customer order protection rules, including the need for input from industry participants as well as Commission approval, the Exchange, NYSE, and FINRA will not have harmonized their respective customer order protection rules by the current July 31, 2009 date for the implementation of the FESC riskless principal reporting.

The Exchange notes that it has agreed with NYSE and FINRA to pursue efforts to harmonize customer order protection rules. As authorized by their respective Boards, FINRA and NYSE Regulation, Inc. ("NYSE Regulation") have each published a Regulatory Notice/Information Memo that solicit comments from their respective member participants on the proposed harmonized approach to customer order protection.¹⁶ Because industry participants need to code their trading systems to comply with customer order protection rules, the Exchange believes that industry input is vital to ensuring that the approach to customer order protection both meets regulatory needs of protecting customer orders, but is also feasible technologically.

Both FINRA and NYSE Regulation have received comments from the public on the Regulatory Notice and Information Memo, including comments from industry forums such as SIFMA and FIF. The comments have generally supported efforts to harmonize the FINRA and NYSE rules. Among issues raised in the comment letters, however, is the concern that FINRA and NYSE have a harmonized approach for reporting riskless principal transactions. In addition, commenters note the need for an implementation period to develop any technology that would be needed to comply with the proposed reporting standard. FINRA and NYSE Regulation continue to work together to develop such a harmonized approach to reporting riskless principal trades.

The Exchange continues to believe that pending full harmonization of the respective customer order protection rules, it would be premature to require firms to meet the current NYSE Amex Equities Rule 92(c)(3) FESC reporting requirements.¹⁷ Indeed, having differing reporting standards for riskless principal orders would be inconsistent with the overall goal of the harmonization process.

Accordingly, to provide the Exchange, NYSE, and FINRA the time necessary to review their respective rules and develop a harmonized rule set that would apply across their respective marketplaces, including a harmonized approach to riskless principal trade reporting, the Exchange is proposing to delay the operative date for NYSE Amex Equities Rule 92(c)(3) from July 31, 2009 to December 31, 2009.

Pending the harmonization of the three rules, the Exchange will continue to require that, as of the date each member organization implements riskless principal routing, the member organization have in place systems and controls that allow them to easily match and tie riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request. To make clear that this requirement continues, the Exchange proposes to amend supplementary material .95 to Rule 92 to specifically provide that the NYSE Amex Equities Rule 92(c)(3) reporting requirements are suspended until December 31, 2009 and that member organizations are required to have in place such systems and controls relating to their riskless principal executions on the Exchange. Moreover, the Exchange will coordinate

¹⁷ The Exchange notes that it would also need to make technological changes to implement the proposed FESC reporting solution for Rule 92(c)(3).

¹⁰ See Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR-Amex-2008-63); No. 58833 (Oct. 22, 2008), 73 FR 64642 (Oct. 30, 2008) (SR-NYSE-2008-106); No. 58839 (Oct. 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03); No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10); and No. 59027 (Nov. 28, 2008), 73 FR 73681 (Dec. 3, 2008) (SR-NYSEALTR-2008-11).

¹¹ See Securities Exchange Act Release No. 56017 (Jul. 5, 2007), 72 FR 38110 (Jul. 12, 2007) (SR-NYSE-2007-21).

¹² See NASD Rule 2111 and IM-2110-2.

¹³ See Securities Exchange Act Release No. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007) (SR-NYSE-2007-114).

¹⁴ See Securities Exchange Act Release Nos. 57682 (Apr. 17, 2008), 73 FR 22193 (Apr. 24, 2008) (SR-NYSE-2008-29) and 59621 (Mar. 23, 2009), 74 FR 14179 (Mar. 30, 2009) (SR-NYSE-2009-30).

¹⁵ See Securities Exchange Act Release No. 59620 (Mar. 23, 2009), 74 FR 14176 (Mar. 30, 2009) (SR-NYSEALTR-2009-29).

¹⁶ See NYSE Regulation Information Memo 09-13 (March 12, 2009); FINRA Regulatory Notice 09-15 (March 12, 2009).

with NYSE and FINRA to examine for compliance with the rule requirements for those firms that engage in riskless principal trading under Rule 92(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ 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 extension provides the Exchange, NYSE, and FINRA the time necessary to develop a harmonized rule concerning customer order protection that will enable member organizations to participate in the national market system without unnecessary impediments.

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 does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its

The Exchange has requested the Commission to waive the 30-day operative delay so that the Exchange can extend the operative date of NYSE Equities Rule 92(c)(3) without interruption. The Commission hereby grants the Exchange's request and believes such waiver is consistent with the protection of investors and the public interest.²² 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-NYSEAmex-2009-48 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-NYSEAmex-2009-48. 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

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.

²² For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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 Number SR-NYSEAmex-2009-48 and should be submitted on or before August 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-18667 Filed 8-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60398; File No. NYSEAmex-2009-47]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Disciplinary Rule 476A To Add Rule 104(a)(1)(A)—NYSE Amex Equities To Its "List of Exchange Rule Violations and Fines Applicable Thereto"

July 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 22, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Disciplinary Rule 476A to add Rule 104(a)(1)(A)—NYSE Amex Equities to its “List of Exchange Rule Violations and Fines Applicable Thereto.”³ The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Disciplinary Rule 476A to add Rule 104(a)(1)(A)—NYSE Amex Equities to its “List of Exchange Rule Violations and Fines Applicable Thereto.”

Background

As described more fully in a related rule filing,⁴ NYSE Euronext acquired The Amex Membership Corporation (“AMC”) pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the “Merger”). In connection with the Merger, the Exchange’s predecessor, the American Stock Exchange LLC, a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC,⁵ and continues to operate as a national securities exchange registered under Section 6 of the Act.⁶

³ New York Stock Exchange LLC (“NYSE”) has submitted a companion rule filing proposing corresponding amendments to NYSE Rule 476A. See SR-NYSE-2009-72 (formally submitted on July 22, 2009).

⁴ See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62).

⁵ The Exchange changed its name to NYSE Amex in March 2009. See Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24).

⁶ 15 U.S.C. 78f.

The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”). The Exchange’s equity trading systems and facilities at 11 Wall Street (the “NYSE Amex Trading Systems”) are operated by the NYSE on behalf of the Exchange.⁷

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.⁸ The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Current Rules 104– and 103B– NYSE Amex Equities

Current Rule 104–NYSE Amex Equities requires, *inter alia*, Designated Market Makers (“DMMs”) registered in one or more securities traded on the Exchange to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market, insofar as reasonably practicable, by contributing liquidity when lack of price continuity and depth, or disparity between supply and demand, exists or is reasonably to be anticipated.⁹ This includes an affirmative obligation to provide quotes at the National Best Bid or Offer a minimum percentage of the trading day (“Affirmative Quote Obligation”).

The DMMs’ Affirmative Quote Obligation is set forth in Rule 104(a)(1)(A)—NYSE Amex Equities. Section (a)(1)(A) of Rule 104 requires

⁷ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63).

⁸ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106); Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10); and Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11).

⁹ See Rule 104(f)(ii)—NYSE Amex Equities.

DMMs to maintain a bid or an offer at the National Best Bid and National Best Offer (“inside”) at least 10% of the trading day for securities in which the DMM unit is registered with an average daily volume on the Exchange of less than one million shares, and at least 5% for securities in which the DMM unit is registered with an average daily volume equal to or greater than one million shares. Time at the inside is calculated as the average percentage of time the DMM unit has a bid or offer at the inside. In calculating whether the DMM is meeting the 10% and 5% requirement, credit may be given for executions for the liquidity provided by the DMM.¹⁰ DMM Reserve or other hidden orders are not included in the inside quote calculations.

Proposed Rule Change

As noted above, the Exchange proposes to add Rule 104(a)(1)(A)—NYSE Amex Equities to its “List of Exchange Rule Violations and Fines Applicable Thereto.”

Under the Exchange’s Minor Rule Violation Plan, NYSE Amex Disciplinary Rule 476A, the Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. Fines provide a meaningful sanction for rule violations when the initiation of a disciplinary procedure under Disciplinary Rule 476 is unwarranted given the facts and circumstances of the violation, or when the violation calls for a stronger response informal discipline than an admonition letter.¹¹

¹⁰ When a DMM sends an s-quote to establish a new best bid or best offer, the DMM’s s-quote may end up executing immediately against dark liquidity inside the spread rather than being quoted. Absent rule relief, the s-quote would not be counted toward the DMM Unit’s quoting requirement, even though the DMM’s intent was to add liquidity to the market, and even though the s-quote in fact resulted in an execution. To address this, the Exchange added a provision to Rule 104–NYSE Amex Equities that allows the Exchange to give credit to a DMM unit that did not meet its quoting requirement as a result of the continuous immediate execution of its s-quotes.

¹¹ The Exchange’s current Minor Rule Violation Plan, NYSE Amex Disciplinary Rule 476A, is based on both NYSE Rule 476A, which was originally adopted by the NYSE and approved by the Commission in 1985, as well as legacy American Stock Exchange Rule 590, which was adopted by the Exchange’s predecessor and approved by the Commission in 1989. See Securities Exchange Act Release No. 34-[sic]21688 (January 25, 1985), 50 FR 5025-01 (February 5, 1985) (approving NYSE Rule 476A) and Securities Exchange Act Release No. 34-27543 (December 15, 1989), 54 FR 53223 (December 27, 1989) (approving American Stock Exchange Rule 590).

Currently, when a DMM fails to meet the affirmative quote obligations set forth in Rule 104(a)(1)(A)–NYSE Amex Equities, the Exchange's only remedy is to bring a formal disciplinary proceeding pursuant to NYSE Amex Disciplinary Rule 476. This is the case whether or not the DMM has failed to meet its obligations once or many times and regardless of whether the DMM made a technical error or an intentional one.

The Exchange believes that the current regulatory approach for dealing with DMM quoting obligations is too inflexible. The Exchange recognizes that DMMs may, for many reasons, fail to meet their affirmative quote obligations under Rule 104(a)(1)(A)–NYSE Amex Equities. In some circumstances, formal disciplinary measures in accordance with NYSE Amex Disciplinary Rule 476 are warranted. However, in other instances such a proceeding may be unwarranted, and the Exchange is of the view that the addition of Rule 104(a)(1)(A)–NYSE Amex Equities to the list of rule violations and fines under Disciplinary Rule 476A will provide a more flexible and appropriate tool to enforce potential failure by DMMs to adhere to the quoting requirements set forth in the Rule, while preserving the Exchange's discretion to seek formal discipline under the appropriate circumstances.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Act,¹² in that they are 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 proposed rule changes also further the objectives of Section 6(b)(6), in that they provide for appropriate discipline for violations of principles of the Act, the rules and regulations thereunder, and Exchange rules and regulations.

The Exchange believes that the proposed rule changes will provide the Exchange with greater regulatory flexibility to enforce the DMM quoting requirements set forth in Rule 104(a)(1)(A)–NYSE Amex Equities in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b–4(f)(6) thereunder.¹⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, 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) of the Act and Rule 19b–4(f)(6)(iii) 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 NYSEAmex-2009–47 on the subject line.

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b–4(f)(6).

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 NYSEAmex–2009–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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 NYSEAmex–2009–47 and should be submitted on or before August 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9–18668 Filed 8–4–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6720]

Waiver of Restriction on Assistance to the Central Government of Tajikistan

Pursuant to section 7088(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8) (“the Act”), and

¹⁵ 17 CFR 200.30–3(a)(12).

¹² 15 U.S.C. 78f(b)(5).

Department of State Delegation of Authority Number 245-1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7088(c)(1) of the Act with respect to the Government of Tajikistan, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: June 2, 2009.

Jacob J. Lew,

Deputy Secretary of State, Department of State.

[FR Doc. E9-18753 Filed 8-4-09; 8:45 am]

BILLING CODE 4710-46-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 18, 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-2004-18468.

Date Filed: July 16, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 2009.

Description: Application of Polar Air Cargo Worldwide, Inc. requesting renewal of its certificate of public convenience and necessity for Route 820 authorizing it to provide scheduled foreign air transportation of property and mail between any point or points in the United States, via any intermediate points, to a point or points in China open to scheduled international

operations, and beyond to any points outside of China, with full traffic rights.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9-18688 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 25, 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 21 days after the filing of the application.

Docket Number: DOT-OST-2009-0166.

Date Filed: July 22, 2009.

Parties: Members of the International Air Transport Association.

Subject:

Mail Vote 605—Resolution 010e. TC3 Special Passenger Amending Resolution between Japan and China (excluding Hong Kong SAR and Macao SAR), (Memo 1310).

Intended effective date: 05 August 2009.

Docket Number: DOT-OST-2009-0169.

Date Filed: July 23, 2009

Parties: Members of the International Air Transport Association.

Subject:

Mail Vote 606—Resolution 010f. TC3 Special Passenger Amending Resolution From Brunei Darussalam to South East Asia, (Memo 1311).

Intended effective date: 05 August 2009.

Docket Number: DOT-OST-2009-0170.

Date Filed: July 24, 2009.

Parties: Members of the International Air Transport Association.

Subject:

PTC31 N&C 0487. TC31 North & Central Pacific. TC3 (except Japan)-North America, Caribbean except between Korea (Rep. of) and USA.

Resolution 010g, 046e. Special Passenger Amending Resolution from Korea (Rep. of) to Canada, Mexico, Caribbean (Memo 0487).

Intended effective date: 7 August 2009.

Docket Number: DOT-OST-2009-0171.

Date Filed: July 24, 2009.

Parties: Members of the International Air Transport Association.

Subject:

PTC31 N&C 0487.

TC31 North & Central Pacific.

TC3 (except Japan)-North America, Caribbean between Korea (Rep. of) and USA.

Resolution 010h.

Special Passenger Amending Resolution from Korea (Rep. of) to USA (Memo 0488).

Intended effective date: 7 August 2009.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9-18689 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2009-0001-N-18]

Information Collection

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on May 21, 2009 (74 FR 23927).

DATES: Comments must be submitted on or before September 4, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (*telephone:* (202) 493-6292), or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493-6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue

two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 21, 2009, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 74 FR 23927. FRA received one comment—a letter—in response to this notice.

The joint letter came from Mr. James Stem, National Legislative Director, United Transportation Union (UTU), and John Tolman, President, Brotherhood of Locomotive Engineers and Trainmen (BLET). The UTU represents 125,000 active and retired railroad, bus, and mass transit workers in the United States and Canada. The BLET is a rail labor organization that was founded as part of the Teamsters Union and represents railroad engineers and railroad operating employees in the United States and Canada. In their extensive letter of support, Mr. Stem and Mr. Tolman stated the following:

Congress assigned FRA to prescribe regulations and issue orders to establish hours of service requirements for train employees engaged in commuter rail and passenger services. Those regulations may differ from the requirements of the Rail Safety Improvement Act (RSIA) requirements for Hours of Service (HOS) applicable to train employees engaged in freight service. In establishing this exception, Congress required FRA to consider scientific and medical research related to fatigue and fatigue abatement, scheduling practices and operating practices that improve safety or reduce employee fatigue. A significant body of scientific and medical research already exists. Also, the commuter and passenger services current scheduling and operating practices in use today mitigate fatigue substantially; so much so that only minor changes to the existing HOS regulations are necessary.

The “Fatigue Avoidance Scheduling Tool” (FAST) is a comprehensive and detailed analysis of how wakefulness affects fatigue and an individual’s effectiveness. The FAST model is based upon the SAFTE fatigue assessment tool which was developed for the U.S. Air Force and the U.S. Army. For a fatigue assessment tool to be useful, it must establish how fatigue impacts effectiveness and at which point reduced effectiveness might compromise safety. The FAST model has been validated for use in predicting effectiveness in freight railroad service, and we believe it can function as an appropriate tool to compare work schedules against a baseline representing the maximum schedule that can be worked under the statute. The current model is programmed to reflect sleep patterns in a workforce that reports for duty on call, and will need to be adjusted to reflect the different sleep patterns of workers with a known reporting time. We believe such an adjustment would permit the use of the FAST model to predict effectiveness among

commuter and passenger train employees
* * *

The medical research supports the conclusion that predictable sleep patterns can significantly diminish the fatiguing effect long hours have on employees. While not a panacea, predictability in work schedules certainly provides the employees with the opportunity to plan their rest. Individuals without regular work hours may find themselves un-rested if they have been at a doctor’s appointment or attending to an elderly parent or child when a call for duty comes. Since the commuter/passenger services serve the public their operations must be advertised to the general public. Train departures, and therefore work schedules, are highly predictable * * *

Obviously adequate levels of manpower are essential for the railroads to properly execute the operation of the scheduled service. Recently, the country has seen a significant increase in ridership in the commuter/passenger operations. With the current administration’s High Speed Rail initiative there is every reason to believe that this trend will continue for the foreseeable future. Coupled with the natural attrition of an aging workforce, manpower will be stressed for years to come.

Railroads must develop some objective means of determining an appropriate and safe level of manpower staffing. One commuter operation has chronic manpower shortages. So much so that the overwhelming majority of its regular assignments and all of its extra list assignments are required to work 6 days. It utilizes a supplementary volunteer extra list of regularly assigned employees (working their only day off) 7 days per week sometimes for weeks in a row simply to address its regular operation.

A fair assessment of operating and scheduling practices will minimize the impact of fatigue on railroad operations, the employees and the general public that use the systems. Through the RSIA Congress instructed the secretary to implement regulations to reduce employee fatigue and improve safety. Fatigue can be effectively mitigated by addressing it before it occurs. Proper manpower staffing and construction of assignments are essential to ensure that outcome. By addressing fatigue at its base level (daily) through the use quality restorative sleep from napping in conducive sleep environments and predictable, regular home sleep patterns the industry will have effectively reduced acute, cumulative and chronic fatigue from wakefulness to a safe level.

FRA received no other comments in response to this notice. Accordingly, DOT announces that these information collection activities have been evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.10(a).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove

paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden for the ICR being submitted for clearance by OMB as required by the PRA.

Title: Work Schedules and Sleep Patterns of Train Crews in Commuter Passenger Service.

OMB Control Number: 2130–New.

Type of Request: Regular Approval of a New Collection of Information.

Affected Public: Commuter Railroad Passenger Service Train Crews.

Abstract: The Railroad Safety Improvement Act of 2008 (RSIA) grants the Federal Railroad Administration (FRA) the authority to prescribe regulations “* * *Governing the Hours of Service of Train Employees of Commuter and Intercity Passenger Railroad Carriers.” (section 21109). This section of the law provides that

Such regulations and orders may address railroad operating and scheduling practices, including unscheduled duty calls, communications during time off duty, and time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release, that could affect employee fatigue and railroad safety.

Furthermore, the regulations shall consider

* * * scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety or reduce employee fatigue, a railroad’s use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees subject to this chapter, a railroad’s required or voluntary use of fatigue management plans covering employees subject to this chapter, and any other relevant factors.

The purpose of the research addressed under this proposed study is to provide FRA with the necessary information to meet the requirements of RSIA as noted above.

The proposed study has two primary purposes:

- To document and characterize the work/rest schedules and sleep patterns of train crews in commuter passenger service
- To examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules.

The intent is to report results in aggregate, not by railroad.

The study will seek to describe the work and sleep patterns for this group of railroad employees. It will also obtain subjective ratings from participants of their alertness/sleepiness on both work and non-work days. Data collection will be through the use of a daily diary or log as well as a brief background questionnaire for each participant. Analysis of the diary data will allow the FRA to assess whether or not there are any work-related fatigue issues. The proposed study will provide a defensible and definitive estimate of the work/rest cycle parameters and fatigue in this group of railroad employees that will inform FRA regulatory policy and action.

Form Number(s): FRA F 6180.130; FRA F 6180.131

Annual Estimated Burden Hours: 930 hours

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, *Attention:* FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: oir_a_submissions@omb.eop.gov

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on July 29, 2009.

Donna Alwine,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–18740 Filed 8–4–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0142]

RIN 2127–AK37

E–911 Grant Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995 (PRA), Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections before seeking OMB approval. This document provides notice of OMB's approval of the information collection and the assignment of a control number for the E–911 grant program.

FOR FURTHER INFORMATION CONTACT: Laurie Flaherty, Office of Emergency Medical Services, NTI–140, telephone (202) 366–2705, fax (202) 366–7721, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), the National Highway Traffic Safety Administration and the National Telecommunications and Information Administration solicited public comments on the proposed collection of information, with a 60-day comment period, in the notice of proposed rulemaking published on October 3, 2008 (73 FR 57567). In a **Federal Register** notice published on May 19, 2009, the agencies announced that they submitted the information collection request to OMB for approval. (73 FR 23465). In the Final Rule published in the **Federal Register** on June 5, 2009 (74 FR 26965), the agencies announced that OMB approval of the information collection was pending. This document provides notice that OMB has approved the information collection and has assigned OMB

control number 2127–0661 for the E–911 grant program.

Issued on July 31, 2009.

Jeff Michael,

Associate Administrator, Research and Program Development, National Highway Traffic Safety Administration.

[FR Doc. E9–18726 Filed 7–31–09; 4:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Full Electronic Distribution of Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy change; final disposition.

SUMMARY: This notice announces the FAA's schedule for transitioning to full electronic distribution of airworthiness directives (ADs). This transition will provide a timelier and more cost effective method for the FAA to provide safety information.

FOR FURTHER INFORMATION CONTACT: Josh Peebles, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Delegation and Airworthiness Programs Branch, AIR–140, 6500 S. MacArthur Blvd., Oklahoma City, Oklahoma 73125. *Telephone:* (405) 954–1345; *fax:* (405) 954–2209, or *e-mail:* josh.peebles@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2006 we published a notice in the **Federal Register** (71 FR 50113) to announce changes in our AD and Special Airworthiness Information Bulletins (SAIB) printing and distribution policy. We also announced our intention to transition to full electronic distribution for ADs and notified the public that we would immediately stop mailing paper copies of SAIBs.

On March 1, 2007 we published a notice in the **Federal Register** (72 FR 9394) to announce our e-mail subscription service for ADs and SAIBs. The service, known as GovDelivery, was activated in May 2007 and is accessible from the Regulatory and Guidance Library (RGL) homepage at: <http://rgl.faa.gov>. The service is free of charge and allows any interested party to subscribe. Subscribers may choose to receive all published documents or only those pertaining to a specific product make and model. They also may choose to receive all published documents for

general categories such as ‘small airplane’ or ‘engine.’ The subscription service sends ADs and SAIBs to the e-mail address of each subscriber within minutes after publication in the RGL.

In September of 2007, the FAA stopped mailing paper copies of ADs and SAIBs to all owners and operators of transport airplanes and engines installed on transport airplanes.

Full Electronic Distribution

a. We will stop mailing paper copies of the remaining products according to the following schedule:

Product	Date
Transport rotorcraft and rotorcraft engines	October 1, 2009.
All other rotorcraft and rotorcraft engines	January 1, 2010.
All aircraft, engines, and propellers	March 1, 2010.

b. Owners and operators should use the following resources to obtain AD and SAIB information electronically:

(1) *Regulatory and Guidance Library (RGL) Web site: <http://rgl.faa.gov>.*

(2) **Federal Register** Web site: <http://www.gpoaccess.gov/fr/>

(3) *GovDelivery e-mail service*—ADs are automatically e-mailed to subscribers who sign-up through the RGL homepage.

c. For those people who might not have computer access or who still desire paper copies, the FAA will continue to provide the AD Biweekly, which is a paid subscription of all ADs issued in the **Federal Register** over the previous 2-week period. The AD Biweekly is printed and mailed by the Government Printing Office (GPO) and does not include SAIBs. Contact the GPO directly at phone: (202) 512-1806 to subscribe.

d. We will continue to fax and or mail paper copies of Emergency ADs until further notice.

Issued in Washington, DC, on July 30, 2009.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E9-18646 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner’s arguments in favor of relief.

American Short Line and Regional Railroad Association

[Waiver Petition Docket Number FRA-2009-0078]

The American Short Line and Regional Railroad Association (ASLRRA), on behalf of its members, seeks a comprehensive waiver of relief from (1) the statutory rest requirements of 49 U.S.C. 21103(a)(1) for certain management employees who engage in limited train service for no more than 25% of their monthly hours in the service to the railroad; (2) the statutory rest requirements contained in 49 U.S.C. 21103(a)(4)(A); and approval of a pilot project to demonstrate the safety of adopting fatigue mitigation plans on class II and class III railroads in lieu of strict compliance with the requirements of these statutory provisions. The entire ASLRRA petition may be reviewed at <http://www.regulations.gov> under the docket number listed above.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2009-0078) and may be submitted by any

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for the following methods: submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 20 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility’s Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Issued in Washington, DC on July 30, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9-18746 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG-2006-24644]

TORP Terminal LP, Bienville Offshore Energy Terminal Liquefied Natural Gas Deepwater Port License Application Amendment; Preparation of Supplemental Environmental Impact Statement

AGENCY: Maritime Administration, DOT.
ACTION: Notice of Amended Application; Notice of Intent.

SUMMARY: The Maritime Administration and the U.S. Coast Guard announce receipt of an application amendment for the licensing of the TORP Terminal LP, Bienville Offshore Energy Terminal (BOET) liquefied natural gas (LNG)

deepwater port. The application amendment contains the information required to continue processing the application. This notice summarizes the applicant's plans and the procedures that will be followed in considering this application amendment. The Coast Guard, in coordination with the Maritime Administration, will prepare a Supplemental Environmental Impact Statement (SEIS) as part of the environmental review of this license application amendment.

The application amendment describes the proposed change in project regasification technology from the "open-loop" LNG vaporization system originally proposed for TORP BOET to a "closed-loop" LNG vaporization system. The proposed vaporization system consists of a floating regasification unit (FRU) that contains ambient air vaporization (AAV) equipment to heat an intermediate fluid that would be sent via flexible pipes to a HiLoad floating regasification unit. The HiLoad would dock to a LNG carrier to provide station-keeping, vaporization of the LNG on the HiLoad, and transfer of natural gas back to the FRU in a closed-loop system. The proposed facility would be located in the Gulf of Mexico, in Main Pass Block MP 258, approximately 63 miles south of Fort Morgan, Alabama. This location is the same as that proposed in the original application. The Draft and Final Environmental Impact Statements were published on the original application on July 6, 2007 and August 8, 2008, respectively.

ADDRESSES: Copies of the original license application, the Draft and Final Environmental Impact Statements (DEIS/FEIS), the application amendment and associated comments and documentation are available for viewing at the Federal Docket Management System (FDMS) Web site: <http://www.regulations.gov> under docket number USCG-2006-24644.

FOR FURTHER INFORMATION CONTACT: LT Hannah Kawamoto, U.S. Coast Guard, telephone: 202-372-1437, e-mail: Hannah.K.Kawamoto@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

SUPPLEMENTARY INFORMATION:

Receipt of Application Amendment

On June 30, 2009, the Coast Guard and Maritime Administration received an amendment for the Bienville Offshore Energy Terminal (BOET) deepwater port license application from TORP Terminal LP.

Background

The construction and operation of a deepwater port must be authorized by the Secretary of Transportation (as delegated to the Administrator of the Maritime Administration). The Coast Guard and Maritime Administration are the lead federal agencies for reviewing the sufficiency of deepwater port license applications and assessing the proposed project's environmental impact on the quality of the human environment (see 33 CFR part 148 *et seq.*).

After receiving the original application, the Maritime Administration and the Coast Guard completed a Draft EIS released on July 6, 2007. An informational open house and a public meeting were held in Mobile, Alabama to allow public comment and involvement. The Final EIS was released on August 8, 2008, and the final license hearing was held on August 26, 2008, in Alabama, the designated adjacent coastal state.

During the original application's public interest review process, public and agency comments were submitted. Several comments were received that discussed ambient air vaporization (AAV) technology as a reasonable alternative for the project's regasification technology. The Final EIS included a brief discussion and evaluation of the AAV technology. The Final EIS also included a brief discussion and evaluation of a floating storage and regasification unit (FSRU). In the application amendment, the applicant is proposing to use a floating regasification unit (FRU). The difference between a FSRU and FRU system is that the FRU would not have any LNG storage capability.

In the application amendment, the applicant proposes to amend the project to use AAV on a FRU to indirectly heat LNG on a single HiLoad in a closed-loop system. The original application proposed to operate an open-loop system using two HiLoads and a support platform. As stated above, AAV was discussed in the original application's FEIS as a generic system based on an existing application of this technology at an onshore LNG facility. The application amendment contains a diagram of the actual AAV design that is proposed to be used.

After consulting with cooperating Federal agencies, the Coast Guard and Maritime Administration have determined that a Supplemental Environmental Impact Statement (SEIS) will provide the appropriate level of information for the National Environmental Policy Act (NEPA) review and analysis. The decision to

produce a SEIS was based upon the finding that the proposed application amendment: (i) Makes substantial changes in the proposed action that are relevant to environmental concerns; and (ii) contains significant new circumstances or information relevant to environmental concerns and which bear on the proposed action or its impacts. The SEIS will describe the project's changed regasification system. As much as possible, the SEIS will incorporate by reference the recently published Bienville Offshore Energy Terminal (BOET) FEIS.

The SEIS process will allow ample opportunity for meaningful public comment and involvement. The Coast Guard and Maritime Administration's initial review of the proposed project changes indicate a reduction in impacts in several key resource areas that were originally identified with the open-loop system. In addition, comments from cooperating Federal agencies and the public on the original EIS discussed and supported the closed-loop AAV technology as an environmentally preferred alternative.

The Council on Environmental Quality's NEPA Regulations (40 CFR 1502.9(c)(4)) provide that scoping is not required for a SEIS. Once completed, a Draft SEIS will be announced in the **Federal Register** and made available for public comment. Following completion and release of the Draft SEIS, there will be a public notice and a 30-day comment period where the Coast Guard and Maritime Administration will receive comments on both the amended application and the Draft SEIS. A public meeting will be held in Alabama approximately two weeks after release of the Draft SEIS. The Coast Guard and Maritime Administration will consider all comments and address them in the Final SEIS. Following completion and release of the Final SEIS, there will be public notice and a 30-day comment period where the Coast Guard and Maritime Administration will receive comments on the Final SEIS. A final license hearing will be held in Alabama approximately two weeks after the release of the Final SEIS. A 45-day comment period will follow the final license hearing during which Federal agencies may provide input to the Maritime Administrator, and the Governor of Alabama may advise the Maritime Administrator of his decision to approve or disapprove the license application. Within 90 days of the final license hearing, the Maritime Administration will issue a record of decision (ROD) on the application.

Questions about the proposed action or the SEIS process may be addressed to

the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit <http://www.regulations.gov>.

Authority: 49 CFR 1.66.

Dated: July 28, 2009.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E9–18682 Filed 8–4–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Value Pricing Pilot Program Participation, Fiscal Years 2009 and 2010

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; solicitation for participation.

SUMMARY: This notice invites States, along with their local government partners and other public authorities, to apply to participate in the Value Pricing Pilot (VPP) program and presents guidelines for program applications for fiscal years 2009 and 2010. Unlike with previous notices, the purpose of this notice is to seek only applications for statewide, regionwide, or areawide transportation pricing studies and for transportation pricing implementation projects that do not entail tolling roadways. This notice seeks applications for fiscal year 2009 funding, and if Congress chooses to extend Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) VPP program funding, for such funds made available in fiscal year 2010.

DATES: 1. Applications for tolling authority only may be submitted at any time.

2. Formal grant applications, however, must be submitted no later than November 3, 2009, to be assured consideration.

3. Applicants may also submit an optional “sketch” or draft proposal by

September 21, 2009, which FHWA will review and provide general feedback on for the applicant to use in its formal grant application. Sketch or draft proposals received after this date may still be reviewed by and commented upon by FHWA at its discretion.

4. For applications that had been submitted under the September 16, 2008 (73 FR 53478) solicitation that were not funded (for a list of projects funded from that solicitation, see: <http://www.fhwa.dot.gov/pressroom/fhwa0913.htm>), and where such applications would still be eligible for funding under the criteria provided by this notice, applicants may submit a letter to the Department by September 4, 2009, requesting comments on their previous applications.

Application Submission: Applications may be submitted through <http://www.grants.gov>.

FOR FURTHER INFORMATION CONTACT: For questions about or to provide information to FHWA that responds to this notice, such as to submit a letter or sketch plan, please contact Ms. Angela Jacobs, FHWA Office of Operations, at (202) 366–0076, angela.jacobs@dot.gov. For technical questions related to the development of pricing projects not involving tolls, please contact Mr. Allen Greenberg, FHWA Office of Operations, at (202) 366–2425, allen.greenberg@dot.gov. For technical questions related to the development of regional pricing projects, please contact Mr. Patrick DeCorla-Souza, FHWA Office of Innovative Program Delivery, at (202) 366–4076, patrick.decorla-souza@dot.gov. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, at (202) 366–4928, michael.harkins@dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register’s home page at: <http://www.archives.gov> and the Government Printing Office’s database at: <http://www.access.gpo.gov/nara>.

Background

Section 1012(b) of the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240; 105 Stat. 1914), as amended by section 1216(a) of the Transportation Equity Act (TEA–21) (Pub. L. 105–178; 112 Stat. 107), and section 1604(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144), authorizes the Secretary of

Transportation (the Secretary) to create a Value Pricing Pilot (VPP) program. Congestion pricing encompasses a variety of strategies to manage congestion on highways, including tolling of highway facilities, as well as other strategies that do not involve tolls, such as mileage-based car insurance and parking pricing. The congestion pricing concept of charging variable fees based upon usage and assessing relatively higher prices for travel during peak periods is the same as that used in many other sectors of the economy to respond to peak-use demands. For example, airlines, hotels, and theaters often charge more at peak periods than at non-peak periods.

According to the statutory requirements of the VPP program, FHWA may enter into cooperative agreements with up to 15 State or local governments or other public authorities (henceforth referred to only as “States”) to establish, maintain, and monitor VPP programs, each including an unlimited number of projects. The FHWA invites interested States to apply to participate in the VPP program for the remainder of FY 2009 and also for FY 2010, if SAFETEA–LU funding is extended. While direct submissions by local governments and public authorities are allowable under SAFETEA–LU, FHWA strongly prefers applications to be submitted through State departments of transportation, since that would allow the potential for multiple VPP program projects within a State counting as only 1 of the 15 allowable partnerships.

To comply with the statutory cap on the number of partnering States and other public authorities in a manner that maximizes program participation, FHWA will only consider an “active” cooperative agreement sufficient to hold 1 of the 15 available VPP program slots, as also noted in the September 16, 2008, notice for VPP program participation (73 FR 53478). An agreement will be considered “active” by FHWA under either of the following two conditions: (1) During the period of time between when a cooperative funding agreement for a project or projects has been signed and when the project or projects has or have been completed, and (2) if VPP program tolling authority has been granted and is still needed to toll a new or existing highway. Absent one or both of these conditions being met, an agreement will not be considered active for the purposes of the VPP program. If progress in moving forward to use its VPP program funding or tolling authority is unsatisfactory, FHWA may withdraw its approval for inactive agreements in favor of other applicants

seeking to obtain VPP program funding or tolling authority.

A maximum of \$12 million is authorized for FY 2009 to be made available to carry out the VPP program, and Congress may choose to authorize additional funds for FY 2010. Of the \$12 million, \$3 million per fiscal year must be set-aside for VPP projects that do not involve highway tolls. FHWA previously solicited for FY 2009 applications in a September 16, 2008, **Federal Register** notice (73 FR 53478) and on May 14, 2009, announced the awarding of five grants totaling \$6,137,000, thereby leaving less than \$6 million to fund additional grants in FY 2009 under this notice. Since none of the five most recent grants are supporting projects that do not involve highway tolls, at least \$3 million of the remaining FY 2009 funds must be used for such projects. If Congress does provide additional VPP program funds for FY 2010, it is FHWA's intention to subsequently award these funds based upon responses to this solicitation, if merited by the applications that are received.

The Federal share payable under the VPP program is up to 80 percent of the cost of the project. Funds allocated by the Secretary to a State under this section shall remain available for obligation by the State for a period of 3 years after the last day of the fiscal year for which funds are authorized. If, on September 30 of any year, the amount of funds made available for the VPP program, but not allocated, exceeds \$8 million, the excess amount will, to comply with the statutory requirements of the VPP program, be apportioned to all States as Surface Transportation Program funds.

Funds available for the VPP program can be used to support pre-implementation study activities as well as to pay for pricing-specific implementation costs of congestion pricing projects. Pursuant to section 1012(b)(2) of ISTEA, FHWA may not fund pre-implementation or implementation costs for more than 3 years. Also, section 1012(b)(6) of ISTEA provides that a State may permit vehicles with fewer than two occupants to operate in high occupancy vehicle (HOV) lanes if the vehicles are part of a local VPP program under this section. In addition to this authority under the VPP program, 23 U.S.C. 166 authorizes States to convert HOV lanes into high occupancy toll (HOT) lanes in which vehicles without the number of occupants required for HOV status are permitted to use an HOV lane if such vehicles are charged a toll. Since the authority to establish and operate an

HOT lane (including HOT lanes on the Interstate System) is no longer experimental and has been mainstreamed in 23 U.S.C. 166, the provisions of 23 U.S.C. 166 will generally be used for HOT projects in order to more effectively allocate VPP funds and program slots.

Pursuant to section 1012(b)(7) of ISTEA, the potential financial effects of congestion pricing projects on low-income drivers shall be considered. Where such effects are expected to be both negative and significant, possible mitigation measures should be identified, such as providing new or expanded transit service as an integral part of the congestion pricing project, toll discounts or credits for low-income motorists who do not have viable transit options, or fare or toll credits earned by motorists by use of regular lanes which can be used to pay for tolls on priced lanes. Mitigation measures can be included as part of the congestion pricing project implementation costs.

Also, section 1012(b)(6) of ISTEA requires the Secretary to monitor the effect of value pricing programs for a period of at least 10 years and report to Congress every 2 years on the effects such programs are having on driver behavior, traffic volume, transit ridership, air quality, and availability of funds for transportation programs. Project partners will be expected to assist FHWA by providing data on their programs for use in these reports throughout the length of the monitoring and reporting period.

In addition to the VPP program, other authorities are available that permit States to use tolling to finance highway construction and reconstruction, promote efficiency in the use of highways, and support congestion reduction. Expanded flexibility to toll is provided under the following programs: HOV facilities; Interstate System Reconstruction and Rehabilitation Pilot; Interstate System Construction Toll Pilot; Express Lanes Demonstration Program; and Section 129 toll agreements. For more information on these programs, please refer to the notice in the January 6, 2006, *Federal Register* entitled, "SAFETEA-LU; Opportunities for State and Other Qualifying Agencies to Gain Authority to Toll Facilities Constructed Using Federal Funds" (71 FR 965).

Applicable Terms

"Value pricing" and "congestion pricing" refer to direct and transparent charges for vehicle use and parking, as well as variable charges for road use, possibly fluctuating based upon location, time of day, severity of

congestion, vehicle occupancy, or type of facility. By shifting some trips to off-peak periods, to mass transit or other higher-occupancy vehicles, to non-motorized modes, or to alternative routes away from priced facilities, or by encouraging consolidation of trips, congestion pricing promotes economic efficiency. It also helps achieve congestion reduction, improved air quality, energy conservation, transit ridership, and revenue generation goals.

A "value pricing project" means any pre-implementation activities or implementation of congestion pricing concepts or techniques discussed in the "Potential Project Types" section of this notice and included under a State or local "value pricing pilot program." A State is considered to have a VPP program if it has one or more approved congestion pricing projects. While the distinction between "project" and "program" may appear to be merely a technical one, it is significant in that, as described in the "Background" section of this notice, the number of total VPP programs is statutorily limited to 15, while there is no limit to the number of VPP projects allowed under each VPP program.

A "value pricing program" means the combination of all congestion pricing projects within a State or local government or public authority. Any State or local government or public authority with a cooperative agreement for a value pricing program is deemed to have a value pricing program.

"Cooperative agreement" means the agreement signed between the FHWA and a public agency to establish and implement congestion pricing pilot projects.

"Toll agreement" means the agreement signed between the FHWA and a State and/or local government or public authority to provide for the statutorily authorized uses of toll revenues.

Program Objective

The overall objective of the VPP program is to support efforts by State and local governments or other public authorities to establish local VPP programs, to provide for the monitoring and evaluation of congestion pricing projects included in such programs, and to report on these effects. The effects of interest include impacts on congestion, travel behavior, traffic volumes, transit ridership, air quality, and funding for transportation improvements. For the purpose of this solicitation, the VPP program focuses both on market-based approaches for congestion relief that do not involve road tolls, such as mileage-based car insurance and parking pricing,

and congestion pricing with road tolls, such as pricing all lanes on limited access highways or all roads within a zone or network.

The FHWA is seeking applications for funding and/or tolling authority to use congestion pricing to reduce congestion, improve system performance, and advance the Department's priorities of growing the economy, enhancing livability, and promoting environmental sustainability. All proposals should incorporate significant pricing mechanisms, whether through non-toll pricing strategies or toll pricing applications, that are designed to substantially advance these objectives.

With successful examples of facility-specific pricing projects already in operation in the U.S., this solicitation, in addition to its focus on non-toll pricing applications, focuses on developing broader areawide approaches to toll-based pricing. Some metropolitan areas, such as Los Angeles, San Francisco, Seattle, and Washington, DC, have begun the process of developing areawide or regionwide congestion pricing scenarios and modeling their effects on long-term system performance and financing. An objective of this solicitation is, as described below, to provide incentive grants to expand the number of metropolitan areas that are developing areawide or regionwide approaches to congestion pricing.

Similar to the case with facility-specific tolling applications, some non-toll pricing applications, such as carsharing, have already proven their success and do not require VPP program funding for their success to be sustained. Deployment of other strategies, such as pricing of parking meters to achieve a certain occupancy level, are much newer in the U.S., but the advancement of such strategies has already secured substantial funding under the VPP and other programs (e.g., in San Francisco), and thus other non-tolling strategies, discussed below, will instead receive priority consideration under this solicitation.

Potential Project Types

The FHWA will consider applications for funds that show that a project will achieve at least one of the following: (1) Perform a rigorous areawide or regionwide congestion pricing scenario study around one or more scenarios that are comprehensive and potentially acceptable to the public; or (2) implement new and innovative non-toll pricing strategies, as detailed below. For pre-implementation projects, applicants should demonstrate that there is already sufficient political support for their

implementation, or that the project is designed to bring about such support.

Congestion pricing charges need to be targeted at a sizable number of vehicles that are causing congestion, and prices should be set at levels significant enough to encourage drivers to use alternative times, routes, modes, or trip patterns, or to telework and avoid commuting during congested periods.

The FHWA is particularly interested in grant applications for projects that do not involve highway tolls. As discussed earlier, SAFETEA-LU sets aside a minimum of \$3 million per fiscal year for such projects. The FHWA in particular seeks tests of non-toll pricing strategies that will substantially improve livability in an area and advance environmental sustainability in a major way, either directly through the benefits the project itself brings, or by demonstrating especially promising strategies such that their implementation will likely be replicated broadly.

Strategies that FHWA believes would meet this test include: (1) Pay-per-mile car insurance, where insurance premiums are converted from an annual or bi-annual charging scheme to one that is instead based primarily on miles or minutes of driving (with rates that still reflect actuarial risks and the coverages that are selected); and (2) highly innovative parking pricing strategies, provided the level and coverage of parking charges is sufficient to bring about substantial and measurable reductions in congestion. For parking pricing, FHWA seeks applications for: (1) Citywide surcharges for entering or exiting parking facilities during or near peak travel periods; (2) parking cash-out, where a city or State passes, and then requests financial support to implement, an ordinance requiring employers to offer cash to their employees in lieu of subsidized parking, or provides substantial incentives for employers to offer such cash-out options; and (3) a city or State seeking support to implement a law that requires or provides sizable financial incentives for housing developers to build more livable communities with reduced car parking, in part by offering renters or purchasers in multifamily housing developments direct and substantial financial savings for not using car parking spaces. Applications are also encouraged that utilize appropriate technologies and provide sufficient participation incentives to deploy dynamic ridesharing (flexible, single-trip carpooling) with the necessary critical mass of users to succeed. To be considered eligible, dynamic ridesharing applications must

be coupled with some transportation pricing, such as parking pricing, thereby expanding affordable transportation options while mitigating equity issues associated with pricing.

The FHWA is also seeking VPP program applications from public entities to study one or more scenarios for broad-scale areawide or regionwide tolling and pricing that have a high probability of getting public support. Applications for areawide or regionwide pricing studies should cover a significantly-sized geographical area and include multiple roadway facilities that are priced, including zone-based pricing, where, as implemented in London and Stockholm, vehicles are charged a substantial fee to drive in a congested area on weekdays. Consideration of variable pricing of multiple facilities or corridors, or of an entire area, will generally be required. Area-wide pricing applications using technologies that provide travelers (including drivers and transit riders) with pre-trip and real-time congestion and pricing information for multiple travel modes and a variety of routes, and that facilitate dynamic ridesharing, are especially encouraged to assist travelers in making efficient travel destination, mode and route choices. Cashless tolling (i.e., no toll booths) is a required element of these approaches in order to be considered for VPP program funding.

As part of broad, areawide or regionwide pricing scenario studies, the inclusion of new, innovative congestion pricing approaches is encouraged. Examples of new ideas that FHWA would like to have further explored are included in an article on congestion pricing published in the March/April issue of *Public Roads*, available at: <http://www.tfhr.gov/pubrds/09mar/04.htm>.

Areawide or regionwide transportation pricing studies are encouraged to include evaluation of benefits, costs, revenues, environmental impacts, distributional impacts, and financial feasibility of each alternative package of transportation improvements, in comparison with the region's currently adopted long-range transportation plan. Development of alternative packages may involve stakeholder groups, including (among others) business groups, environmental groups, and advocates for social equity. An example of the sort of regional transportation study that has already been undertaken for which FHWA seeks new applications is the Traffic Choices Study conducted by the Puget Sound Regional Council for the Seattle Metropolitan Area, which led to the Transportation 2040 Draft

Environmental Impact Statement (May 2009), available at: <http://psrc.org/projects/trans2040/deis/index.htm>.

Projects should be designed to reflect the needs of low-income or other transportation-disadvantaged groups. Mitigation strategies to address equity concerns may include bus rapid transit or other enhancements of transportation alternatives for peak-period travelers, special reduced toll rates for low-income travelers, limited monetary credits to all travelers or just to low-income travelers that can be used to pay for tolls or transit fares (thereby allowing a limited amount of free travel before having to pay full fees), and credit-based tolling programs such as toll credits earned by motorists in regular lanes or by transit users in the corridor which can later be used to pay tolls on priced lanes or for free transit trips.

Pre-Implementation Studies

Applicants are encouraged to carry out pre-implementation study activities designed to lead to implementation of an areawide or regionwide congestion pricing project in the relatively near-term. The intent of the pre-implementation study phase is to support efforts to identify and evaluate congestion pricing project alternatives, and to prepare the necessary groundwork for relatively near-term implementation.

FHWA will not fund purely academic studies of congestion pricing or studies that involve major expansions of existing facilities or area-wide or regionwide planning studies covering many topics besides pricing and incorporating congestion pricing only as one of a number of options. Such studies may be funded with regular Federal-aid highway or transit planning funds. Applications for pre-implementation studies will be evaluated based on the likelihood that they will lead to relatively near-term implementation of broad congestion pricing conforming to the objectives described in the previous section.

Project Costs Eligible for Grant Funding

The FHWA will provide up to the statutorily allowable 80 percent share of the estimated costs of an approved project. Funds available for the VPP program can be used to support pre-implementation study activities and also to pay for implementation costs of congestion pricing projects. Costs of planning for, setting up, managing, operating, monitoring, evaluating, and reporting on local congestion pricing pilot projects are eligible for reimbursement, but neither pre-

implementation study costs nor implementation costs may be reimbursed for longer than 3 years. The 3-year funding limitation will begin on the date of the first disbursement of Federal funds for project activities. Examples of specific pre-implementation and implementation costs eligible for reimbursement include the following:

1. **Pre-Implementation Study Costs**—Covered activities include those undertaken to advance two key priority focus areas: Foundation building and regional program development.

a. Foundation building activities may be reimbursed, such as public participation, consensus building, marketing, modeling, and technology assessments; and

b. Regional program development activities are also eligible for reimbursement, including project and financial planning, project design, creating project specifications, and activities required to meet Federal or State environmental or other planning requirements.

2. **Implementation Costs**—Allowable costs for reimbursement under this priority focus area include those for setting up, managing, operating, evaluating, and reporting on a congestion pricing project, including:

a. Necessary salaries and expenses, or other administrative and operational costs, such as installation of equipment for operation of a pilot project, costs of monitoring and evaluating project operations, and costs of continuing public relations activities during the period of implementation;

b. “[M]itigation measures to deal with any potential adverse financial effects on low-income drivers[.]” per section 1012(b)(7) of ISTEA as amended, including costs of providing transportation alternatives, such as new or expanded transit or ridesharing services provided as an integral part of the congestion pricing project. Funds are not available to replace existing sources of support for these services.

Project implementation costs can be supported until such time that sufficient revenues are being generated by the project to fund such activities without Federal support, but in no case for longer than 3 years. Each implementation project included in a value pricing pilot program will be considered separately for this purpose.

Funds may not be used to pay for activities conducted prior to approval for VPP program participation. Complementary actions, such as lane construction, the implementation of traffic control systems, or transit projects, can be funded through other

highway and transit programs under SAFETEA-LU and from new revenues raised as a result of a pilot. VPP program applicants are encouraged to explore opportunities for combining VPP program funds with other funds. Federal funds may not, however, be used to match VPP program funds unless there is specific statutory authority to do so.

Eligible Uses of Revenues

Section 1012(b)(2) of ISTEA provides that revenues generated by any congestion pricing pilot project must be applied first to pay for pilot project operating costs. Any project revenues in excess of pilot project operating costs may, according to section 1012(b)(3) of ISTEA, be used for any projects eligible under Title 23, United States Code. A project's operating costs include, but are not limited to, any costs necessary for a project's execution; mitigation measures to deal with adverse financial effects on low-income drivers; the proper maintenance of the facility; any construction (including reconstruction, rehabilitation, restoration, or resurfacing) of the facility; any debt service incurred in implementing the project; and a reasonable return on investment by any private entity financing the project. States are encouraged to consider using excess revenue for projects designed to provide benefits to those traveling in the corridor where the project is being implemented.

For VPP toll projects, FHWA and the public authority (including the State transportation department) having jurisdiction over a facility must enter into a cooperative agreement concerning the use of toll revenue to be generated under a congestion pricing project. The cooperative agreement will provide that the public authority use the revenues in accordance with the applicable statutory requirements. The execution of a cooperative agreement is necessary to the establishment of a project under the VPP program, and will facilitate oversight of a State's compliance with revenue use requirements of the VPP program.

Who Is Eligible To Apply?

Qualified applicants for either tolling authority or grants (or both) include State or local governments or public authorities, such as toll agencies. Although project agreements must be with the aforementioned public entities, and preferably with State departments of transportation in order to preserve participation slots, a VPP program partnership may also include private tolling authorities, for-profit companies, and non-profit organizations.

The Value Pricing Pilot Program Applications

Formal applications shall be submitted through Grants.gov at <http://www.grants.gov> by close of business November 3, 2009.

No particular format is required for tolling authority applications or grant applications, although specific information is requested. Applications should include the following background information: (a) The name, title, e-mail address, and phone number of the person who will act as the point of contact on behalf of the requesting agency, authority, or authorities; (b) A description of the agency, authority, or authorities requesting funding and/or tolling authority; (c) A statement as to whether only funding, both funding and tolling authority, or only tolling authority via the VPP program is being sought to support either pre-implementation or implementation activities as permitted; and (d) A description of the public agency or agencies that will be responsible for operating, maintaining, and enforcing the tolling program, if applicable.

The core of the application should include the following:

1. A description of the congestion problem being addressed (current and projected);
2. A description of the proposed pricing program and its goals;
3. An identification of the facilities that will be covered, including whether any of the subject facilities is an Interstate facility, whether any HOV lanes currently exist on any of the facilities, and whether any construction-related activities would be needed to implement the project and, if so, whether this is new construction, expansion, rehabilitation, reconstruction, or other;
4. Where applicable, a plan for implementing or modifying tolls, and a related timetable. Where known, the range of anticipated tolls and the strategies to vary toll rates (i.e., the formulas for variable pricing), the technology to be used, enforcement programs, and operating details;
5. Anticipated effects of the pricing program on reducing congestion, altering travel behavior, and encouraging the use of other transportation modes;
6. Preliminary estimates of the social and economic effects of the pricing program, including potential equity impacts, and a plan or methodology for further refining such estimates;
7. The role of alternative transportation modes in the project;

8. A description of the tasks to be carried out as part of each phase of the project;

9. A detailed project timeline broken down by tasks and phases;

10. An itemized budget broken down by task and funding year (i.e., Year 1, Year 2, etc.), which is only required for grant applications;

11. Plans for monitoring and evaluating implementation projects, including plans for data collection and analysis, before and after assessment, and long-term monitoring and documenting of project effects;

12. A detailed finance and revenue plan, including (for implementation projects) a budget for capital and operating costs; a description of all funding sources, planned expenditures, and proposed uses of revenues; and a plan for projects to become financially self-sustaining (without Federal support) within 3 years of implementation, all of which is only required for grant applications;

13. A discussion of previous public involvement, including public meetings, in the development of the proposed pricing program; any expressions or declarations of support from State or local government officials or the public; future plans for involving key affected parties, coalition building, and media relations, and more broadly for ensuring adequate public involvement prior to implementation;

14. Plans for meeting all Federal, State and local legal and administrative requirements for project implementation, including relevant Federal-aid planning and environmental requirements;

15. A description of how, if at all, any private entities are involved in the project either in spending grant funds or in cost sharing or debt retirement associated with revenues; and

16. If tolling authority is sought, an explanation about how electronic toll collection project components will, if applicable, be compatible with other electronic toll collection systems in the region.

If some of these items are not available or fully developed at the time a formal application for grant funding is submitted, applications will still be considered for funding support if they meet the interests of FHWA, as described earlier in the section entitled "Potential Project Types," and if there is a strong indication that these items will be completed within a short time.

VPP Program Process

A. Requests for Funding

To ensure that all projects receive fair and equal consideration for the limited

available funds, FHWA requires formal grant applications to be submitted to <http://www.grants.gov> by close of business November 3, 2009, to be assured consideration for FY 2009 funds and, if made available, FY 2010 funds, as well. Applicants may also submit an optional "sketch" or draft proposal, in a format selected by the applicant, to angela.jacobs@dot.gov by September 21, 2009, which FHWA will review and provide feedback on for the applicant to use in its formal grant application. Sketch or draft proposals received after this date may still be reviewed by and formally commented upon by FHWA at its discretion. For applications that had been submitted under the September 16, 2008 (73 FR 53478) solicitation that were not funded (for a list of projects funded from that solicitation, see: <http://www.fhwa.dot.gov/pressroom/fhwa0913.htm>), and where such applications would still be eligible for funding under the criteria provided by this notice, applicants may submit a letter to angela.jacobs@dot.gov at FHWA September 4, 2009, requesting comments on their previous applications.

B. Projects for Which No Funds Are Requested

Although most projects under the VPP program involve program funds, some projects do not, and instead only seek tolling authority under the program. In such cases, and especially where a State is not already part of the VPP program, FHWA recommends that the public authority investigate the other opportunities to gain authority to toll that are listed in the notice in the January 6, 2006, **Federal Register**, entitled "SAFETEA-LU; Opportunities for State and Other Qualifying Agencies to Gain Authority to Toll Facilities Constructed Using Federal Funds" (71 FR 965).

Proposal Evaluation Criteria

All proposals will be evaluated based on:

- (1) The degree to which they reduce congestion, improve system performance, and support economic growth, enhance livability through support of alternatives to driving, and promote environmental sustainability by reducing fuel consumption and greenhouse gas emissions;
- (2) The degree to which they encourage drivers to use alternative times, routes, modes, or trip patterns, or to telework and avoid commuting during congested periods;
- (3) The degree to which new, innovative congestion pricing approaches are included; and

(4) The degree to which proposals are designed to reflect the needs of low-income or other transportation-disadvantaged groups.

In addition, area-wide and region-wide pricing proposals will be evaluated based on:

(5) The degree to which proposals include evaluation of benefits, costs, revenues, environmental impacts, distributional impacts, and financial feasibility of each alternative package of transportation improvements, in comparison with the region's currently adopted long-range transportation plan;

(6) The degree to which further development of alternative packages will involve stakeholder groups, including (among others) business groups, environmental groups, and advocates for social equity;

(7) The degree to which they are likely to lead to relatively near-term implementation;

(8) The scale of the congestion pricing strategy, i.e., the extent of the geographic area, or the number of roadway facilities or corridors that are to be priced;

(9) The degree to which the proposed pricing scenarios are comprehensive involving synergistic combinations of multimodal investment strategies, Intelligent Transportation System technologies and travel demand management strategies; and

(10) The degree to which proposed pricing scenarios have a probability of getting public support.

Further, non-toll pricing proposals will be evaluated based on the degree to which they demonstrate especially promising strategies such that their implementation will likely then be replicated broadly.

Post-Selection Process

If approved, a formal cooperative agreement will be prepared between the FHWA and the State. The cooperative agreement will include a refined scope of work developed from the original funding application and subsequent discussions with FHWA. Federal statutes will govern the cooperative agreement. Regulations cited in the agreement, and 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, will also apply. Each congestion pricing project must have a separate cooperative agreement. Although, in the past, the FHWA has allowed some States to have a master cooperative agreement that is subsequently amended for each approved project, in the future the FHWA will execute a separate agreement for each project. For

congestion pricing projects that involve only toll authority and that do not involve requests for Federal funds, a cooperative agreement must still be executed.

Where the implementation of tolling is part of the VPP project, Federal tolling authority is required. To secure such authority for a VPP project, a cooperative agreement will be executed, regardless of whether VPP program funding is being provided. The cooperative agreement must include all of the information normally required as part of a tolling agreement (stipulating the terms of the tolling, providing details on the dispensation of revenues, etc.). A separate tolling agreement will not be required. As discussed previously, revenues must generally first be used to cover the project's operating costs, including debt service, provide reasonable return on private party investments, and be used for the costs necessary to properly operate and maintain the facility. Any remaining revenues may then be used for other Title 23, United States Code eligible purposes.

Where tolling authority is secured through a VPP program cooperative agreement, such an agreement, like tolling agreements providing the authority to toll under other Federal provisions and programs, will be signed by the Executive Director of FHWA. If tolling authority is not required, the cooperative agreement will be signed by the FHWA Division Administrator of the State Division Office. All cooperative agreements will be administered jointly by FHWA's Office of Operations and FHWA's State Division Office.

Other Requirements

Prior to FHWA approval of pricing project implementation, congestion pricing programs must be shown to be consistent with Federal metropolitan and statewide planning requirements (23 U.S.C. 134 and 135; and, if applicable, 49 U.S.C. 5303 and 5304).

Implementation projects involving tolls outside metropolitan areas must be included in the approved statewide transportation improvement program and be selected in accordance with the requirements set forth in section 1204(f)(3) of TEA-21.

Implementation projects involving tolls in metropolitan areas must be: (a) Included in, or consistent with, the approved metropolitan transportation plan (if the area is in nonattainment for a transportation-related pollutant, the metropolitan plan must be in conformance with the State air quality implementation plan); (b) included in

the approved metropolitan and statewide transportation improvement programs (if the metropolitan area is in a nonattainment area for a transportation related pollutant, the metropolitan transportation improvement program must be in conformance with the State air quality implementation plan); (c) selected in accordance with the requirements in section 1203(h)(5) or (i)(2) of TEA-21; and (d) consistent with any existing congestion management system in Transportation Management Areas, developed pursuant to 23 U.S.C. 134(i)(3).

(Authority: 23 U.S.C. 315; sec. 1216(a), Public Law 105-178, 112 Stat. 107; Public Law 109-59; 117 Stat. 1144)

Issued on: July 30, 2009.

Victor M. Mendez,

Federal Highway Administrator.

[FR Doc. E9-18699 Filed 8-4-09; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8928

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8928, Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code.

DATES: Written comments should be received on or before October 5, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne, (202) 622-3933, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Dawn.E.Bidne@irs.gov.

SUPPLEMENTARY INFORMATION: Title: Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code.

OMB Number: 1545-2148.

Form Number: Form 8928.

Abstract: Form 8928 is used by employers, group health plans, HMOs, and third party administrators to report and pay excise taxes due for failures under sections 4980B, 4980D, 4980E, and 4980G.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes.

Type of Review: This is an extension of a previously approved collection.

Affected Public: Businesses and other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 18 hours 33 minutes.

Estimated Total Annual Burden Hours: 1,858.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 28, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9-18676 Filed 8-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Limited Payability Claim Against the United States for Proceeds of an Internal Revenue Refund Check

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Limited Payability Claim Against the United States for Proceeds of an Internal Revenue Refund Check.

DATES: Written comments should be received on or before October 5, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne, (202) 622-3933, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Dawn.E.Bidne@irs.gov.

SUPPLEMENTARY INFORMATION: Title: Limited Payability Claim Against the United States for Proceeds of an Internal Revenue Refund Check.

OMB Number: 1545-2024.

Form Number: Not applicable.

Abstract: This form is used by taxpayers for completing a claim against the United States for the proceeds of an Internal Revenue refund check.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, businesses and other for-profit organizations.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 28, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9-18677 Filed 8-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13460

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13460, Employer/Payer Information.

DATES: Written comments should be received on or before October 5, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne, (202) 622-3933, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Dawn.E.Bidne@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Employer/Payer Information.

OMB Number: 1545-1849.

Form Number: Form 13460.

Abstract: Form 13460 is used to assist filers who have underreporter or correction issues. Also this form expedites research of the filers' problems.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, farms, not-for-profit institutions, Federal government, and State, local, or Tribal government.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden

Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 27, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9-18678 Filed 8-4-09; 8:45 am]

BILLING CODE 4830-01-P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Meetings To Prepare 2009 Report to Congress

Advisory Committee: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open meetings to prepare 2009 Annual Report to Congress—August 5-6, 2009, September 23-24, 2009, October 7-8, 2009 and October 19-21, 2009 in Washington, DC.

SUMMARY: Notice is hereby given of meetings of the U.S.-China Economic and Security Review Commission.

Name: Carolyn Bartholomew, Chairman of the U.S.-China Economic and Security Review Commission

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to prepare a report to Congress "regarding the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China [that] shall include a full analysis, along with conclusions and recommendations for legislative and administrative actions* * *

Purpose of Meetings: Pursuant to this mandate, the Commission will meet in Washington, DC on August 5-6,

September 23-24, 2009, October 7-8, 2009 and October 19-21, 2009 to consider the first and later rounds of drafts of material for its 2009 Annual Report to Congress that have been prepared for its consideration by the Commission staff, and to make modifications to those drafts that Commission members believe are needed.

Topics to be Discussed: The Commissioners will be considering draft report sections addressing the following topics:

- The United States-China trade and economic relationship, including the relationship's current status; significant changes during 2009; the control of China's economy by its government, and the effect of that control on the United States; and China's pharmaceutical industry and impact on U.S.

- The implications of China's industrial policy and the impact of trade with China in central and western New York.

- China's activities directly affecting U.S. security interests, including its expansion of military and security activities abroad, recent naval modernization, and intelligence activities and capabilities.

- China's foreign and regional activities and relationships in East Asia, including those pertaining to Continental Asia, specifically Pakistan and Afghanistan, Taiwan, and to its own special administrative region of Hong Kong.

- China's control of information and its impact on the United States, including China's external propaganda and influence operations, cyber espionage and security, and the extent of freedom of expression within China.

DATES AND TIMES (EASTERN DAYLIGHT

TIME):—Wednesday and Thursday,

August 5-6, 2009 (10 a.m. to 4 p.m.)

—Wednesday, September 23, 2009 (1 p.m. to 4 p.m.)

—Thursday, September 24, 2009 (10 a.m. to 4 p.m.)

—Wednesday and Thursday, October 7-8, 2009 (10 a.m. to 4 p.m.)

—Monday, Tuesday, and Wednesday, October 19-21, 2009 (10 a.m. to 4 p.m.)

ADDRESSES: All meetings will be held in Conference Room 231 (2nd Floor), except the meetings on August 5 & 6 that will be held in Conference Room 333 (3rd Floor), of The Hall of States located at 444 North Capitol Street, NW., Washington, DC 20001. Public seating is limited and will be available on a "first-come, first-served" basis. Advanced reservations are not required. All participants must register at the front desk of the lobby.

Required Accessibility Statement: The entirety of these Commission editorial and drafting meetings will be open to the public. The Commission may recess the public editorial/drafting meetings to address administrative issues in closed session.

FOR FURTHER INFORMATION CONTACT: Kathy Michels, Associate Director, U.S.-China Economic and Security Review Commission, 444 North Capitol Street NW., Suite 602, Washington, DC 20001; Phone: (202) 624-1409; E-mail: kmichels@uscc.gov.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106-398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7), as amended by Public Law 109-108 (November 22, 2005).

Dated: July 29, 2009.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E9-18674 Filed 8-4-09; 8:45 am]

BILLING CODE 1137-00-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0648]

Agency Information Collection Activities (FMP) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 2009.

ADDRESSES: Submit written comments on the collection of information through <http://www.Regulations.gov>; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0648" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-7485, fax (202) 273-0443 or e-mail denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0648."

SUPPLEMENTARY INFORMATION:

Titles:

a. Foreign Medical Program (FMP) Registration Form, VA Form 10-7959f-1.

b. Claim Cover Sheet—Foreign Medical Program (FMP), VA Form 10-7959f-2.

OMB Control Number: 2900-0648.

Type of Review: Extension of a currently approve collection.

Abstracts:

a. Veterans with service connected disabilities living or traveling overseas complete VA Form 10-7959f-1 to enroll in the Foreign Medical Program.

b. Healthcare providers complete VA Form 10-7959f-2 to submit claims for payments or reimbursement of expenses relating to veterans living or traveling overseas (except for the Philippines) with service-connected disability. VA will accept provider's generated billing statement, Uniform Billing-Forms (UB) 04, and Medicare Health Insurance Claims Form, CMS 1500 for payments or reimbursements.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 22, 2009 at pages 24076-20477.

Estimated Total Annual Burden:

a. Foreign Medical Program, VA Form 10-7959f-1—110 hours.

b. Claim Cover Sheet, VA Form 10-7959f-2—3,652 hours.

Estimated Average Burden per Respondent:

a. Foreign Medical Program, VA Form 10-7959f-1—4 minutes.

b. Claim Cover Sheet, VA Form 10-7959f-2—11 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Foreign Medical Program, VA Form 10-7959f-1—1,660.

b. Claim Cover Sheet, VA Form 10-7959f-2—19,920.

Dated: July 30, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9-18626 Filed 8-4-09; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (0896a)]

Agency Information Collection (VA Subcontracting Report) Activities Under OMB Review

AGENCY: Office of Small and Disadvantaged Business Utilization, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Office of Small and Disadvantaged Business Utilization, Department of Veterans Affairs, has submitted the collection of information as abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 4, 2009.

ADDRESSES: Submit written comments on the collection of information through <http://www.Regulations.gov>; or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control 2900-New (0896a)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-7485, FAX (202) 273-0443 or e-mail: denise.mclamb@va.gov. Please refer to "OMB Control No. 2900-New (0896a)."

SUPPLEMENTARY INFORMATION:

Title: VA Subcontracting Report, VA Form 0896a.

OMB Control Number: 2900-New (0896a).

Type of Review: New collection.

Abstract: In accordance with Public Law 109-461 Section 8127(a)(4), "The Secretary shall establish a review mechanism to ensure that, in the case of a subcontract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal." VA Form 0896a will be used to collect information from subcontractors to compare information obtained from subcontracting plans submitted by prime contractors in order to determine

the accuracy of the data reported by prime contractors.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection

of information was published on May 27, 2009, at page 25302.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 646 hours.

Estimated Average Burden Per Respondent: 2 Hours.

Frequency of Response: One time.

Estimated Number of Respondents: 323.

Dated: July 30, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9-18628 Filed 8-4-09; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Wednesday,
August 5, 2009**

Part II

Environmental Protection Agency

**40 CFR Part 211
Product Noise Labeling Hearing
Protection Devices; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 211

[EPA-HQ-OAR-2003-0024; FRL-8934-9]

RIN 2060-A025

Product Noise Labeling Hearing Protection Devices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this action the Environmental Protection Agency proposes to revise the Noise Labeling Standards for Hearing Protection Devices (HPD). These standards have not been amended since 1979 and technologies have evolved and improved in the interim. The proposed revisions provide manufacturers with newly developed testing methodologies that are the most appropriate to assess and label hearing protection devices, and to allow legitimate hearing protection products to be sold as such in U.S. markets. In particular, this action should result in the availability of a new generation of significantly improved devices that are precluded from entering the marketplace as "hearing protectors" by the 1979 regulation. Finally, the Agency is mindful of the relatively large percentage of small entities that comprise the HPD industry. In recognition of the evolutionary changes in marketing and selling products brought about by the internet, and in order to minimize the potential economic burden on manufacturers that sell their products "exclusively" over the internet, the Agency is proposing to allow "electronic labeling" as a means for certain manufacturers (as defined in subpart B) to comply with the labeling requirements of this proposed rule.

DATES: *Comments.* Written comments must be received on or before September 4, 2009.

Public Hearing. If requested by August 17, 2009 the EPA will hold a public hearing on August 25, 2009. If a public hearing is held, anyone that would like to speak at the hearing should notify the EPA by August 18, 2009.

ADDRESSES: Submit your comments, identified by docket ID number EPA-HQ-OAR-2003-0024, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov.
- *Fax:* (202) 566-1741.

- *Mail:* EPA Labeling Regulation, Docket Number EPA-HQ-OAR-2003-0024, Environmental Protection Agency, EPA Docket Center, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation (Monday through Friday, from 8:30 a.m. to 4:30 p.m.), excluding legal holidays and special arrangement should be made for deliveries of boxed information. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

Instructions: Direct your comments to Docket ID Number EPA-HQ-OAR-2003-0024. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by 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 EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name or other content 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 defect 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 www.regulations.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Air Docket, EPA/DC, 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 Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Catrice Jefferson, U.S. Environmental Protection Agency, Office of Air and Radiation, Mail Code 6103A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone Number—(202) 564-1668; Fax Number—(202) 564-1554; and E-mail Address—jefferson.catrice@epa.gov.

SUPPLEMENTARY INFORMATION: *Outline.* The information presented in this preamble is organized as follows:

- I. Noise Control Act Authorities
- II. Introduction
- III. Background
- IV. Product Applicability
- V. Incorporation by Reference
- VI. Test Methodologies
- VII. Noise Reduction Rating Strategies
- VIII. Label Format and Content
- IX. Compliance Requirements
- X. Cost Impact Analysis
- XI. Statutory and Executive Order Reviews

I. Noise Control Act Authorities

In the Noise Control Act of 1972 (42 U.S.C. 4907), hereinafter "the Act", the Congress declared that it is the "policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health and welfare." Congress further declared that one purpose of this Act is " * * * to authorize the establishment of Federal noise emission standards for products distributed in commerce, and to provide information to the public respecting the noise emission and noise reduction characteristics of such products."

Section 8 (Labeling) of the Act states that "the Administrator (of the Environmental Protection Agency) shall, by regulation, designate any product (or class thereof)—(1) which emits noise capable of adversely affecting the public health or welfare; or (2) which is sold wholly or in part on the basis of its effectiveness in reducing noise." Further, of direct relevance to this proposal, it provides that "the Administrator shall by regulation require that notice be given to the

prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise, as the case may be. Such regulations shall specify (1) whether such notice shall be affixed to the product or to the outside of its container, or to both, at the time of its sale to the ultimate purchaser or whether such notice shall be given to the prospective user in some other manner, (2) the form of the notice, and (3) the methods and units of measurement to be used” [in developing the required information notice].”

II. Introduction

EPA has issued rules, found at 40 CFR Part 211, subpart B, which implement section 8 of the Act. EPA issued these rules in 1979 (44 FR 56120). These rules require manufacturers of hearing protection devices (HPD), that are entered into commerce in the United States, to provide the prospective user with information regarding the products’ effectiveness in reducing the level of noise (unwanted sound) entering a user’s ears. The regulation requires that such information be presented at the time of its sale to the ultimate purchaser on a label(s) that is readily visible at the point of purchase or distribution to users.

Since 1979, the demand for hearing protector devices has increased dramatically due, in part, to an increased awareness of hearing loss in the workplace and the increased stringency of occupation and health regulations at the federal and state levels. The Agency estimates the current *legal* hearing protector market to be approximately four (4) billion units annually, comprised of about 2.1 billion units sold to industrial users and an estimated 1.9 billion sold to military and commercial users.

As a result of an increased demand for more effective products, significant technological changes have occurred in the design, performance and comfort of hearing protectors with the resultant introduction of new products that, unfortunately, are not amenable to the current regulatory testing and rating schemes. These products include special purpose “passive” (non-electronic aided) devices, custom molded and tuned devices, electronic noise reduction devices, sound restoration devices and combination hearing protector (communication headset). Other changes that have occurred in the hearing protector industry include the consolidation of U.S. and foreign manufacturers, and an increasing number of foreign-made products finding their way into U.S.

commerce that are not in compliance with the existing rule.

Today’s proposal reflects these technological advances and specifies the new and revised test methods to determine product effectiveness; the mathematical process to determine a numeric effectiveness rating(s) (i.e., Noise Reduction Rating (NRR)); the required graphic and textual information for the required labels; the introduction of electronic labeling for organizations that sell their hearing protectors exclusively via the internet; and future compliance testing to assure the continuous accuracy of product effectiveness and label information. EPA’s overall objectives remain, as they were 30 years ago:

(1) Provide accurate and understandable information to hearing protector purchasers, users, and hearing conservation professionals regarding the acoustic performance of hearing protection products in specific noise environments so that meaningful product comparisons, with respect to the reduction of sound entering a user’s ears, can be made as part of a product purchase or use decision.

(2) Provide such information with minimal Federal involvement by ensuring the labeling requirements are structured to minimize administrative, economic, and technical impacts on manufacturers, distributors, and other interested parties.

(3) Promote improvements in hearing protector design, performance, and user acceptability.

(4) Promote public awareness of potential damage to hearing that can result from unprotected exposure to high intensity sound.

III. Background

Since EPA’s promulgation of the 1979 regulation, the federal government, universities and industry have conducted research on the effectiveness of hearing protection devices when used in “real world” settings. Professional and trade organizations, manufacturers and other federal agencies have presented their concerns to the EPA on a number of significant issues including the currently required test method, the required Noise Reduction Rating (NRR), and the required textual information on labels. All interested parties generally agree that the existing regulation needs to be revised to address new technology products, related test methodologies, and current user needs.

In response, EPA gave notice via the Agency’s Web site and by written invitation to interested parties to participate in a workshop at EPA headquarters in Washington, DC on

March 27–28, 2003. The EPA sought detailed technical concerns, new information and recommendations relevant to the current federal labeling requirements for hearing protection devices, with particular emphasis in the following areas:

(1) Product Label

- Primary label information and format
- Supporting information
- Label size and placement

(2) New Hearing Protector Technologies

- Sound restoration systems
- Active and passive devices
- Active noise reduction
- Communication headset

(3) Noise Reduction Effectiveness Rating

- Test methodologies
- Passive and active devices
- Effectiveness metric
- Periodic retesting of products

The two-day workshop included presentations of invited papers that provided the historic basis for the current hearing protector regulation; a review of technical revisions to test methods since the 1979 promulgation of the regulation; an analysis of the relationship of the current Noise Reduction Rating (NRR) to current American National Standards Institute (ANSI) and International Standards Organization (ISO) test protocols; and an overview of new hearing protector technologies.

The workshop also included “break-out” sessions to address the three major topic areas noted above. The sessions were facilitated by personnel from the National Institute for Safety and Health (NIOSH), and conducted informally without transcript to stimulate the free flow of ideas and exchange of information. However, the session facilitators recorded the essence of the discussions, while preserving the autonomy of the commenters.

All formal presentations are available in EPA Docket Number EPA–HQ–OAR–2003–0024. The docket also contains summaries of each of the breakout sessions and an overall summary that integrates the conclusions and recommendations of the sessions. The proceedings of the workshop, including all presentations and summaries, will be referred to henceforth as “the report” or “the workshop report.” The report may be found at document number twenty-nine (29) in the above referenced docket.

The workshop presented a number of reasons why the existing regulation should be revised. The most notable are summarized below:

A. Product Applicability

The Agency has been aware of electronic devices such as active noise cancellation, sound restoration, combination communication protectors, that were essentially barred from claiming the acoustic noise reduction benefits attendant to these devices due to the limitations of the federal test procedures designed for non-electronic hearing protectors. Similarly, some protectors that rely upon acoustical and mechanical behavior to increase attenuation were also barred. This is because absent an appropriate measure of the product's noise reduction effectiveness, it cannot be sold as a hearing protection device.

B. Noise Reduction Rating

The most-expressed concern was with the currently-required noise reduction rating (NRR) metric the single-number rating scheme that EPA specified to quantitatively rate the effectiveness (i.e., the sound attenuation or sound reduction) offered by a hearing protection device when used as instructed by its manufacturer. In particular, it was alleged that most purchasers and users of hearing protectors have a limited understanding of the NRR, believing that the higher the numerical rating, the better the product. While technically correct, it was suggested that purchasers or users may select products primarily on the basis of NRR differences as small as 1 decibel (dB), whereas issues of comfort, compatibility with safety equipment, communication needs, and ease of use can be of equal or greater importance to the ultimate user.

Field studies by various researchers,¹ over the past three decades, revealed a relatively poor correlation between the labeled NRR of selected protectors, as determined from testing in accordance with the American National Standards Institute (ANSI) S3.19–1974 test procedure, and the attenuation realized by typical users of these protectors when tested without the benefit of the experimenter fitting the device as required in ANSI S3.19. This difference was more pronounced with earplugs than with earmuffs, where the former device requires specific fitting skills by the user.

Based in large part on these referenced field studies, one Federal agency has made significant modifications to their criteria governing the application of the NRR for determining acceptable employee noise

exposure in the work place. The Department of Labor/Occupational Safety and Health Administration (OSHA) has instructed its inspectors to “derate” (reduce) a hearing protector’s estimated attenuation by 50 percent when assessing the relative effectiveness of hearing protectors in lieu of engineering noise reduction controls.²

The National Institute for Occupational Safety and Health (NIOSH) also suggests the derating of protectors in the workplace. However, in contrast to OSHA, they suggest subtracting differing percentages from the labeled NRR for each of the three types of hearing protectors: 25% from the labeled NRR of earmuffs, 50% from the labeled NRR of foam earplugs, and 70% from the NRR of all other earplugs.³

In both cases the recommended “derating” is based on the agencies’ engineering judgment and not controlled scientific determination and consequently could lead to unintended consequence of “over protection” that could obscure warning signals or necessary voice communication.

C. Test Methodology

The American National Standards Institute has withdrawn the S3.19–1974 performance test standard (“Method for the Measurement of Real-Ear Protection of Hearing Protectors and Physical Attenuation of Earmuffs”), which is mandated in the current regulation (40 CFR 211 subpart B) and replaced it with ANSI/ASA S12.6–2008, “Methods for Measuring the Real-Ear Attenuation of Hearing Protectors,” which is believed to yield data that more closely mirrors the “real world” effectiveness of hearing protector devices.

The principal concern with S3.19–1974 is its requirement that testing laboratory personnel (hereinafter the experimenter) physically fit the HPD on the human test subject. The basis for using human test subjects is to address the range of differences in both the external and internal structure of the human ear. Clearly, the original intent of the experimenter fitting the device was to minimize the variability of

product effectiveness that could occur due to the user’s lack of skill in fitting the device and not that due to the sound reduction effectiveness of the device itself when used as instructed by the manufacturer. However, this procedure can lend itself to experimenter fit adjustments of the product on the test subject to achieve the maximum sound reduction possible without regard for a test subject’s comfort or intended fit. Finally, a major deficiency of ANSI S3.19 with regard to current and potential future products is its inability to be used to determine the performance of special devices, such as those utilizing active noise reduction and those used in high level impulsive noise fields.

EPA agrees with interested parties that the current required test methodology, based upon ANSI S3.19–1974, can result in unrealistically high sound reductions that are generally not attainable in real world use. The resultant labeled NRR can lead to product selections that may leave users under-protected and subject to potential hearing damage. Further, the procedure lacks suitability for the testing of other than passive devices. For these reasons, the EPA has concluded, subject to consideration of public comment, that ANSI S 3.19–1974 is no longer appropriate for HPD label requirements.

D. Test Subjects

ANSI S3.19–1974, requires 10 subjects to be tested regardless of the type of protector. Each subject is tested three times and their mean attenuations and standard deviations are determined without averaging the individual subject results. Interested parties have suggested that more test subjects should be utilized for passive insert devices in order to achieve a more statistically accurate representation of the user population. They also proposed that each test subject be required to undergo multiple tests on each product in order to obtain an average fit sound reduction value. They have also suggested that fewer test subjects be required for devices that fit over the user’s ears (ear muffs) because such protectors require minimal user skill in obtaining a proper fit.

The EPA favors any changes in the testing protocol that will improve the quality of information that can be provided to the ultimate user of an HPD while offering the potential for reduced testing costs.

E. Compliance Testing

The current regulation was written at a time when, in large part, ear plugs made of wax-impregnated cotton,

¹ The referenced studies can be found in the Federal Docket at <http://www.regulations.gov>, docket number EPA–HQ–OAR–2003–0024.

² Occupational Safety and Health Administration (1999). OSHA Technical Manual, Section IV, Appendix IV:C, Methods for Estimating Hearing Protector Attenuation. Washington DC: Office of Science and Technology assessment http://www.osha.gov/dts/osta/otm/noise/hcp/attenuation_estimation.html.

³ National Institute for Occupational Safety and Health (1998). Occupational Noise Exposure, Revised Criteria, 1998. Publication No. 98–126. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health.

silicon, early formulas of polyurethane foam, and earmuffs, were the only types of products on the market. For many reasons, too numerous to detail here, the EPA decided to require compliance testing of a HPD only once prior to its entry into commerce. Further tests are required if (1) a manufacturer modifies the design or changes materials or structure such that the acoustic performance of the product may be degraded; (2) the Administrator has reason to believe the original effectiveness rating is in error, or otherwise requires information pursuant to section 13 of Noise Control Act; or (3) a selective enforcement audit revealed products in non-compliance with their labeled information. With the entry of many new HPD materials, designs, and electronic and mechanical systems, the Agency has become concerned with the adequacy of its present *once in a product lifetime* test requirement.

IV. Product Applicability

This proposed regulation would apply to all devices or materials sold as explicit or implicit "hearing protection devices" on the basis of their ability to reduce the level of sound entering the user's ears and thus serve to protect the user's hearing. The proposed regulation also applies to devices whose primary function may not be hearing protection, but which are nonetheless sold in-part as providing protection to the user's hearing.

To the extent that a product manufacturer, importer, packager or any other party introduces into U.S. commerce any product that incorporates an explicit or implicit claim that the product can protect the hearing of the user or stipulates the level of sound reduction offered by such product, then it would be subject to the requirements of this proposed regulation.

The Agency has attempted to establish product definitions on the broadest basis in order to capture all current and future HPD designs and characteristics. The EPA recognizes that by taking this broad approach, certain products presently on the market, that are intended to provide a level of comfort for sleeping, listening to music, restricting the entry of water into ears during swimming or bathing, etc., may be captured as possible hearing protectors. As stated above, this rule does not apply to those devices or materials.

While not necessarily a complete listing, the general categories of hearing protector devices that are subject to this proposed regulation are described below:

(1) *Passive Hearing Protection Device*. A device that relies solely on its structural elements to block or otherwise control the transmission of sound into the ear canal and that does not use electronic circuits or acoustic elements to reduce the entry of external sound.

(2) *Active Hearing Protection Device*. A device that contains electronic components including transducers (i.e. speakers and microphones) to increase or decrease the transmission of sound into the ear canal. Also referred to as an electronic hearing protection device.

(3) *Ear plug*. A hearing protection device that is designed to be inserted into the ear canal and held in place principally by virtue of its fit inside the ear canal.

(4) *Ear muff*. A hearing protection device usually comprised of a headband which applies spring-like force/pressure to two ear cups with soft cushions to seal against the external ear or pinna (supra-aural) or the sides of the head around the pinna (circumaural). The ear cups may also be held in position by attachment arms mounted on a hardhat or hardcap.

(5) *Active Noise Reduction Hearing Protection Device*. A device that uses single or in combination, electrical and structural elements to reduce the sound transmitted to the ear canal through acoustic cancellation of the air-conducted and/or bone-conducted external sound.

(6) *Amplitude Sensitive Hearing Protection Device*. A device that is designed to produce a change in sound attenuation as a function of the external sound level.

(7) *Communication Headset*. A voice communication device (ear plug, ear muff, semi-insert device or helmet) that is designed also to reduce the level of sound at the users' ears by either structural elements and/or electronic means.

(8) *Custom-molded Hearing Protection Device*. A device that is made to conform to a specific person's ears (pinnas) and ear canals.

(9) *Helmet*. A hearing protection device that provides impact protection to the head or skull and that is designed also to reduce the external sound through either structural elements and/or electronic means.

(10) *Semi-insert Device*. An ear plug-like hearing protection device consisting of soft pods or tips that are held in place by a lightweight band. The pods are positioned in the conchae covering the entrances to the ear canals, or fitted to varying depths within the ear canals. Semi-inserts that cap the canal require the force of the band to retain their

position and acoustic seal. Semi-inserts that enter the canal behave more like ear plugs; they seal the ear to block noise with or without the application of band force. Also referred to as canal cap or banded hearing protector.

V. Incorporation by Reference

The test methodologies that are being proposed in subpart B rely in whole or in part on established consensus standards of the American National Standards Institute (ANSI) and design standard of the International Electrotechnical Commission (IEC). The version of the standards that are incorporated in the rule remains the applicable standard unless and until the EPA amends the rule to reflect any change in the test procedures. In recognition of the copyrights that protect these standards, the Agency is "incorporating by reference," into subpart B, the following ANSI and IEC standards:

(1) ANSI/ASA S12.6—2008, "Methods for Measuring the Real-Ear Attenuation of Hearing Protectors"

(2) ANSI S12.42—1995 (R2002), "Microphone-in-Real-Ear and Acoustic Test Fixture Methods for the Measurement of Insertion Loss of Circumaural Hearing Protection Devices"

(3) ANSI/ASA S12.68—2007, "Methods of Estimating Effective A-weighted Sound Pressure Levels When Hearing Protectors are Worn"

(4) IEC 60711, "Occluded-ear simulator for the measurement of earphones coupled to the ear by ear inserts"

VI. Test Methodologies

The EPA has determined, after extensive investigations, multi-laboratory testing and discussions with experts in the field, that the following test methodologies are appropriate for use on the broad spectrum of present and potentially future materials and devices that are sold wholly or in-part on the basis of their ability to reduce the level of sound entering the human ear.

Further, to avoid the potential creation of a technical barrier to U.S. manufacturers' global trade, the Agency has considered foreign testing and labeling standards regarding HPD rating schemes and their relationship to the U.S. Noise Reduction Rating (NRR). In that regard, the Agency has given particular attention to the International Standards Organization (ISO) standard 4869, parts 1 and 2 which describe, for the most part, the European testing and rating methods for HPDs. ISO 4869 part 1 permits subjects to be experienced and trained in proper product use technique.

However, the Agency has concluded that the referenced ISO standards do not add substantively to the intended testing and rating objectives of the proposed regulation over that offered by the selected ANSI standards.

The Agency's consideration of ANSI S12.6–2008 was preceded by considerable debate within the hearing protector device community regarding the qualifications of the human test subjects. ANSI S12.6–2008 offers two significantly different testing protocols, Method A and Method B, as they relate to prior experience of the test subjects and role of the experimenter in the preparation of test subjects prior to product testing. In brief, Method A test subjects are informed and experienced regarding the use of HPDs, based upon detailed instruction and demonstration from the experimenter or from previous HPD use. Method B test subjects are selected principally because of their lack of prior knowledge and experience with HPDs. They are not provided any guidance from the experimenter with regard to product use, beyond that given by the manufacturer's normally provided written instructions. There was no consensus on whether EPA should require Method A or Method B.

A. Method Selection

Several factors must be considered in the selection of testing protocols. First, the measured sound attenuation is the principal determinant of the potential noise reduction rating (effectiveness) of the device. Second, the variability of the rating metric, which is primarily a function of subject selection and training and test laboratory practices, must be accounted for. Third, to the extent possible, the test method should give a measure of product effectiveness under real-world use conditions. Finally, the method should provide a reliable and repeatable means for assessing product performance, with minimal influence and impact of non-product related factors. The competing methods and their differing means to account for user capabilities are presented below.

1. Method A

Supporters of Method A believe it is the appropriate protocol to assess the acoustic performance and sound attenuation capability of an HPD attributes that are a function of product design, materials and construction, rather than user skills. When subjects are trained in the proper use of hearing protectors, they demonstrate higher average attenuation for devices such as earplugs and semi-aural inserts than do "inexperienced" subjects. In the EPA-

sponsored interlaboratory studies, earmuffs exhibited little change in attenuation between experienced and inexperienced test subjects. However, for earplugs and semi-aural devices, there were marked improvements in attenuation when Method B subjects were given training; attenuation results for foam roll-down earplugs showed significant improvement as a result of correct fit. The range of attenuation results tended to be larger with Method A, but the variability across test subjects was reduced markedly from that of Method B.

Method A is similar to the International Standards Organization (ISO) test standard 4869–1 that permits subjects to be experienced with the use and fitting of protectors. The Occupational Safety and Health Administration (OSHA) and the military require training in the use of hearing protectors, thus supporting the use of Method A that reflects the attenuation obtained by trained users. Supporters also maintain that Method B is an assessment of the product's ergonomics and manufacturers' instructions, but not necessarily the products' noise reduction capabilities. Thus, the use of inexperienced subjects increases the variance of the attenuation data and may serve to mask procedural variances between testing laboratories. Finally, they expressed concern that selection of a Method-B rated protector could result in user over-protection due to the understated attenuation results from inexperienced subjects. This, in turn, can lead to potential safety hazards, particularly in those noise environments that rely on speech communications and audible warning signals.

2. Method B

Supporters of Method B maintained that the use of inexperienced test subjects is a better predictor of the level of sound reduction (attenuation) that might be expected by users in the real world as opposed to the laboratory. Data from field studies show slightly lower real-world attenuation than the laboratory data using Method B, and even studies of well-trained users (as opposed to test subjects) showed results similar to Method B data. Further, it appears that the rank ordering of hearing protector attenuation using Method B correlates well with the data from field studies. While Method-B results exhibited better reproducibility, the measured attenuations were lower. Finally, the variability of the Method-B results was greater than that of Method-A results.

Method B supporters also suggest that the use of subject fit testing methods

will eventually lead to protector designs that facilitate the user fitting the protector correctly.

3. Training

Although disagreement exists between Method A and B supporters and parties that will be affected by this revised regulation, there is common agreement that the ultimate effectiveness of a product can only be realized with proper training or, at a minimum, user-friendly instructions. The Department of Defense (DOD) requires that enlisted personnel, officers, and civilians who are exposed to noise receive instruction in the proper use and maintenance of hearing protectors. The OSHA requires that workers involved in a hearing conservation program be instructed about the harmful effects of noise and trained in the proper use of hearing protectors. NIOSH recommends that training is an essential element of every hearing loss prevention program, along with noise control engineering and administrative measures to prevent hearing loss. Finally, the National Hearing Conservation Association (NHCA) recommends that training in the proper use of hearing protectors be provided to noise-exposed persons.

4. Test Protocol Selection

The EPA is proposing to adopt the ANSI S12.6–2008—Method-A testing protocol for all hearing protectors in their "passive" mode. EPA believes, subject to consideration of public comment, that Method A is more appropriate to the intent and fulfillment of the hearing protector labeling program objective—to *provide an accurate assessment of the acoustic performance of only the product* (see section 8(b) of the Act, authorizing labeling which describes a product's "effectiveness in reducing noise").

EPA agrees that Method B can more nearly represent the anticipated protection for uninformed HPD users. But it is not reasonable to assume that HPD users will be typically uninformed, or that they would remain so as they grow accustomed to the use of an HPD. In fact, the federal labeling regulation is but one leg of a three legged stool and is not intended to be all-encompassing in the prevention of hearing damage or loss. The other two legs of a hearing conservation program must include user training and, to the extent possible, engineering controls of noise.

The Agency has several concerns with the use of Method B. First, it believes the concept of "naïve" test subjects, as prescribed in ANSI S12.6, is not appropriate for the determination of a

product's acoustical performance, absent human intervention. EPA believes that the naivety of the test subject (hereinafter "inexperienced" test subject) disappears (or is at least reduced) once the test subject has completed his or her first series of tests. Consequently, the use of such subjects for multiple testing of similar products is questionable regarding their inexperience. Second, based upon results from an EPA sponsored and NIOSH managed multi-laboratory test⁴ of six different products, significant differences in technique between testing laboratories became evident from Method A data. However, such differences appeared to be masked by the large variability between test subjects based upon Method B data. Third, the Agency believes the true potential effectiveness (NRR) of the HPD, when used correctly as instructed by the manufacturer, could be understated because of low attenuation measurements that resulted from improper fit by inexperienced test subjects; this is particularly important with ear insert HPDs.

Further, EPA agrees with supporters of Method A regarding potential over-protection as a result of user selection based on a low Noise Reduction Rating determined from Method B testing. EPA believes the HPD rating should show, within a reasonable range, the sound reduction that users can expect to receive when the device is worn as instructed by the manufacturer. Since EPA cannot regulate human behavior nor provide training in the proper use of HPDs, its only regulatory option is to provide the most accurate product performance information available and rely on training from other entities to assure proper use. It is on the above basis that EPA is proposing to require the use of Method A.

Finally, in the absence of suitable ANSI or other recognized testing standards that address devices that incorporate electronics to enhance their sound reduction (attenuation) performance (i.e., "active" mode) or that are intended for use in extremely high impulsive noise environments (levels greater than 140 decibels), the Agency, in collaboration with NIOSH and the U.S. Air Force, has developed test methods for these devices. An explanation of these "non-consensus standard" test protocols is given below. The EPA is seeking comment on these new test protocols.

⁴ National Institute for Occupational Safety and Health (NIOSH)/EPA Interlab Study Comparison of ANSI S12.6, Method A and B. Refer to the Federal Docket at <http://www.regulations.gov>, docket number EPA-HQ-OAR-2003-0024.

B. Proposed Testing Protocols

1. Passive Noise Reduction Testing

As stated above, EPA is proposing that ANSI 12.6-2008, Method A, Real Ear Attenuation at Threshold (REAT) test protocol be used for the determination of the *passive* noise reduction performance of *all categories* of hearing protector materials and devices. The key elements of the REAT test method includes:

- Subject Selection and Qualification
- Fitting Protocol
- Test Procedure
- Reporting of Test Data

a. Subject Selection and Qualification

The ANSI S12.6-2008 standard specifies test subject requirements for the Method-A protocol. Subjects must have pure-tone air conducted hearing thresholds better than 25 dB HL (Hearing Level) in both ears. Subjects must also demonstrate their proficiency in obtaining a hearing threshold in the test environment with the specific equipment used in the testing laboratory. Proficiency is demonstrated through repeated threshold testing without hearing protectors being worn such that the subject has a range of thresholds that does not exceed a difference of 5 decibels for each test frequency. The Agency believes that subject selection criteria can be used to identify a population of test subjects that produce high attenuations and which have a narrow range of attenuations across subjects. Therefore, the Agency will permit subjects to be rejected for various physical reasons during the pretest process, but they may not be removed from the pool of tested subjects due to their poor attenuation results.

b. Fitting Protocol

Under the 1979 regulation, the fitting protocol requires an experimenter-fit method. The subject serves as an acoustical test fixture capable of providing a response to the test stimulus. The experimenter places the protectors on the subject's head or in the subject's ear canals and prohibits the subject from making any adjustments to the fit of the product. This practice provided a repeatable measurement of the maximum attenuation that a product could achieve for deeply inserted earplugs. For devices such as earmuffs and semi-aural inserts, the ability to achieve a greater attenuation was less susceptible to experimenter manipulation.

The proposed ANSI S12.6-2008 Method-A incorporates specific instructions for the experimenter and

limits the interaction between the subject and experimenter once training in the use of the product is completed. The process of defining how a subject should be trained was found to be more complex than defining the process for an inexperienced subject. The Working Group responsible for the development of ANSI S12.6-2008 Method-A settled on an approach that in many ways reflects the reality of how protectors should be issued to noise-exposed persons. The experimenter is allowed to provide training to the subject in how to best fit and use the specific hearing protector. However, once the subject enters the test room, the experimenter is prohibited from providing further instruction. When one considers how protectors are distributed and worn in most settings, if any training is given, it generally is of a short duration and the user must ultimately fit the protector on his/her head or in their ear canals.

c. Test Panel Size

The protocol stipulated in the 1979 regulation specifies that ten subjects are to be tested three times for occluded and unoccluded thresholds and, upon their meeting specified hearing criteria, be selected as the test panel. These requirements were based upon research conducted by the U.S. Air Force and represented the best estimates of variability available in 1979. Since that time, the ANSI S12, Working Group 11 determined that 20 subjects are statistically appropriate for testing ear plugs and semi-aural inserts and 10 subjects are appropriate for ear muffs. The most recent interlaboratory study conducted by EPA and NIOSH found that 20 subjects were adequate for repeatable intra-laboratory tests with both Method-A and Method-B protocols.⁵ Section 5.8, "Number of subjects", of ANSI S12.6 requires that 10 subjects be tested for earmuffs or helmets and 20 subjects for each test on earplugs or semi-insert devices.

Questions have been raised about the appropriate number of subjects to be used in certain circumstances. It has been suggested that the regulation allow manufacturers to increase the sample size indefinitely, with the proviso they report to EPA the total number of subjects tested for each HPD. The Agency is not opposed to this latter approach provided the test data from *all* subjects is included in the calculations leading to the NRR. However, at this time the EPA is proposing to adopt the

⁵ National Institute for Occupational Safety and Health (NIOSH)/EPA Interlab Study Comparison of ANSI S12.6, Method A and B. Refer to the Federal Docket at <http://www.regulations.gov>, docket number EPA-HQ-OAR-2003-0024.

requirements for 10 and 20 test subjects as specified in ANSI S12.6, Section 5.8. The Agency will consider comments on this topic.

d. Test Room Environment

EPA is proposing to change the requirements of the test room environment from those specified in ANSI S3.19–1974. Changes of particular note are the reverberation time of the room and the characterization of the sound field with respect to uniformity and diffusivity; both parameters are more specific under ANSI S12.6–2008. The procedure to determine the occluded and unoccluded thresholds is defined as a modified Bekesy procedure. This procedure was not selected on the basis of superior psychophysical techniques, but was selected by the ANSI S12 Working Group because most of the testing labs used a variant of the method; variation across testing labs could be minimized by standardizing the method.

e. Test Frequencies

The ANSI S3.19–1974 standard required the REAT test include attenuation measurements at 3150 and 6300 Hz. However, later analysis⁶ of the added benefit realized by the current NRR due to the inclusion of test frequencies at 3150 and 6300 Hz, revealed differences on the order of 0.1 to 0.3 decibels. NIOSH conducted a similar analysis on 435 devices listed in the NIOSH Compendium⁷ of Hearing Protection Devices and confirmed the earlier results. Thus, the voluntary standards community concluded that the small differences in the NRR through the inclusion of these two added test frequencies do not justify the additional time and effort in testing subjects at those frequencies. Consequently, in the recent versions of ANSI S12.6 the requirement to test at 3150 and 6300 Hz has been eliminated for REAT measurements. The Agency concurs with these findings and is proposing to no longer require tests of attenuation at 3150 and 6300 Hz.

f. Computation of the Noise Reduction Rating (NRR)

The 1979 regulation requires the NRR be computed with the mean attenuations and standard deviations from *all* test subjects at each frequency band. The ANSI S12.68–2007 standard

requires that data from the individual subjects be used in determining a device's rating across a range of different noise spectra. The inclusion of both subject and spectral variability provides results that are more representative of the product's performance when used by different persons in different types of noise environments.

The Agency is proposing that the ANSI S12.68 methods be used to compute the required NRRs for Passive hearing protectors on the basis that such NRRs provide the best available means of describing product performance that is likely to occur in real-world environments.

2. Active Noise Reduction Testing

Active Noise Reduction (ANR) devices require additional measurements beyond those described above for the passive attenuation methods. An ANR device utilizes electronic circuitry to sample an external sound signal, analyzes the principle acoustic component(s), and then generates a 180 degree out-of-phase signal to be played into the occluded volume (the space under the protector) that, in effect, cancels the external signal that is present under the protector. An error correction microphone in the occluded volume is used to determine the effectiveness of the control, thus allowing adjustment of control parameters to maximize effectiveness.

ANR circuitry has been incorporated in both earplug and earmuff HPDs in several forms; digital or analog controls or a combination of the two have been used. Digital control circuits tend to isolate specific tonal components of the external sound and effect a significant noise reduction. Analog circuits tend to be simpler to implement and have a broader share of the market. The type of control can be feedback, feed forward or a hybrid of the two. In a feedback circuit, the signal must be sampled in the occluded volume and the control is based upon the error correction microphone. In a feed forward circuit, the external microphone is sampled and the control is predicted. The error correction microphone is used to help the circuit determine the effectiveness of the control.

a. Test Method Design Parameters

ANR devices pose a particular problem when attempting to determine a noise reduction rating. The use of a REAT procedure yields an attenuation setting for the device that is biased due to the residual noise produced by the ANR circuitry. When activated, ANR

devices tend to produce a small level of electronic noise that is audible in quiet environments. Because REAT testing requires the test subject to identify the presence of a sound produced by electro-mechanical speakers in the test environment, any sound produced by the hearing protector can interfere with the ability to measure near the subject's threshold of hearing, resulting in an inaccurate assessment of the device's active noise reduction performance. An alternative method for determining the noise reduction of the active device is to utilize the Microphone In Real Ear (MIRE) technique where a small microphone is placed in the subject's occluded volume and the insertion loss (the difference in noise level when the device is activated and not activated) is measured. Alternatively, the transmission loss (the difference in noise levels between the external sound field and occluded volume) can be measured. A potential limitation of the MIRE technique is that it underestimates noise reduction at low frequencies when compared to the REAT method.

The use of the MIRE technique for earmuff ANR devices can be readily applied since the occluded volume is sufficiently large that a miniature microphone can be placed completely within the earmuff and positioned in the ear canal without interfering with the seal of the muff cushions to the side of the head. The diameter of the lead wires to the MIRE microphone can be small enough such that no gaps in the seal will be created. Alternatively, the MIRE microphone can be wireless, thus eliminating the need for any wires to exit underneath the cushions of the ear muffs.

In the case of ANR earplugs, the use of a MIRE measurement becomes complicated. Some prototypes rely on a deep-insertion custom-molded earplug that houses the electronic package. For these devices, the occluded volume may only be 0.5 cubic centimeters. Placement of the miniature microphone in the occluded volume could adversely affect the operation of control circuits designed for a specific occluded volume. If the test method uses a probe microphone, then the probe either has to be placed alongside the earplug or must be passed through a sound bore in the device. Placement of a probe microphone alongside the earplug creates a potential leakage path that changes the acoustic impedance of the occluded volume. Requiring a sound bore through the device deprives the manufacturer of critical volume within the device that may be necessary to house additional circuitry. The seal of

⁶Murphy WJ, "Analysis of the necessity to test at 3150 and 6300 Hz and the effect on the Noise Reduction Rating."

⁷Franks JR, Graydon PS, Jeng C, Murphy WJ, "NIOSH Hearing Protector Device Compendium," http://www2d.cdc.gov/hp-devices/hp_srchpg01.asp (2003), as of July 6, 2008.

the sound bore with the probe tube can also present a sound leakage path.

The Agency has received input from researchers in the field of active noise reduction hearing protection devices and has determined that the method to evaluate ANR noise reduction must include a combination of both the REAT and the MIRE techniques. As stated earlier, every hearing protector manufacturer would be required to conduct a REAT passive measurement and publish a passive NRR. Consequently, a REAT tests would have to be carried out on all ANR devices with their electronic circuitry turned off.

For ANR earplugs, the active contribution would be measured on an acoustic test fixture. The test fixture would include artificial ear canals (tapered cylinder) and ear simulators that approximate the occluded volume and acoustic impedance of the human ear; such devices are commercially available.

For earmuffs, the method uses the same test subjects who participated in the REAT testing. MIRE microphones are mounted on ear plugs underneath both the left and right ear muffs and the microphones are centered in the ear canal flush with the floor of the concha.

To overcome the discrepancy between MIRE and REAT, the MIRE technique would be used to measure the active contribution to the total HPD noise reduction. In both the earmuff and earplug cases, the device would be assessed with the electronics turned on and off in a broadband noise field. The difference between the noise levels measured in the on and off conditions are calculated to estimate the active attenuation contribution. The active contribution is added to the attenuations measured with the REAT method. Together, these attenuations for each subject would be used to estimate the NRR according to the ANSI S12.68–2007 method.

b. Method Requirement

No standardized testing method(s) has yet been developed for determining the peak noise reduction of hearing protection devices. Several organizations have investigated a range of impulse generation techniques. University of Florinapolis, Brazil has a large diameter acoustic shock tube in which a mannequin head can be placed to test the performance of a protector.⁸ The Finish Institute of Occupational

⁸ Birch RS, Gerges SN, Vergara EF, "Design of a pulse generator and shock tube for measuring hearing protector attenuation of high-amplitude impulsive noise" Appl. Acoustics 64:269–286 (2003).

Health and the Polish Central Institute for Labour Protection have reported the attenuation of hearing protectors exposed to an acoustic shock tube.^{9 10} The French German Research Institute de Saint Louis (ISL) evaluates hearing protector performance with explosives and an anthropometric mannequin with an embedded ear simulator. The US Army has conducted mannequin measurements with explosives and also with an acoustic shock tube. The US Air Force has also evaluated protectors on a mannequin with an explosive impulse source. NIOSH has conducted exposure measurements for gunshots and various occupational impulsive noises and has utilized a mannequin.^{11 12} The use of a mannequin with simulated ears, in place of human test subjects, is essential to avoid the risk of hearing damage at the required high impulse sound levels.

Berger¹³ published a review of methods for measuring attenuation of hearing protection devices and has noted that one problem common to many of the artificial ear or head test fixtures available at that time was a lack of isolation of the sensing microphone. The purpose of the mannequin or test fixture is to determine the performance of the air conducted pathway of the device. Berger previously identified that bone conduction of the impulse through the skull was a limiting factor for hearing protector performance. Thus, the test fixture must incorporate isolation of the acoustic sensors from mechanical vibrations that are analogous to that of bone conduction.

Currently there are several mannequins (test fixtures) available for acoustic research as well as other fixtures of varied design that could be potentially used to determine peak sound reduction. Three of the most well-known mannequins are the G.R.A.S. KEMAR (Knowles Electronic Manikin for Acoustic Research), the Bruel and Kjaer HATS (Head and Torso Simulator) and the Head Acoustics RMS

⁹ Parmentier G., Dancer A., Buck K., Kronenberger G., Beck C., "Artificial Head (ATF) for Evaluation of Hearing Protectors" *Acustica*, Volume 86 (2000).

¹⁰ Zera J. and Mlynski R. "Attenuation of high-level impulses by earmuffs" *J. Acoust. Soc. Am.* 122:2082–2096 (2007).

¹¹ Tubbs RL, Murphy WJ, "Health Hazard Evaluation Report 2002–0131–2898 Fort Collins Police Services, Fort Collins Colorado" DHHS–CDC–NIOSH, HETA #2002–0131–2898 (2003).

¹² Harney J., King B., Tubbs R., Crouch K., Hayden C., Kardous C., Khan A., Mickelsen L., Willson R., "Health Hazard Evaluation Report 2000–0191–2960 Immigration and Naturalization Service, National Firearms Unit, Altoona, PA," DHHS–CDC–NIOSH, HETA #2000–0191–2960 (2005).

¹³ Berger, E. "Methods of measuring the attenuation of hearing protection devices", *J. Acoust. Soc. Am.* 79:1655–1687 (1986).

fixture. Parmentier et al. reported that the isolation of the KEMAR and the early model of the Head Acoustics fixtures did not achieve sufficient isolation to get below bone conduction.¹⁴ The HATS device suffers from a similar problem as KEMAR; the volume of the head is devoid of any sound or vibration absorbing mass. Parmentier et al. isolated the ear simulator inside a suspended capsule within a relatively solid acrylic body. The additional features were the use of a replaceable ear canal and pinna set which allow both muffs and plugs to be tested. The ISL mannequin has the added benefit of being anthropometrically correct and thus more nearly simulates sound diffraction effects around the head.

a. Test Procedure

The proposed test procedure consists of three parts: calibration, data collection from a hearing protector exposed to the impulse sound source and computation of the of the peak noise reduction.

Calibration is accomplished by simultaneously measuring sound impulses having a peak sound pressure level (SPL) of approximately 150 dBA. The pulse waveforms at both the free-field source location and the impulse acoustic test fixture (IATF), without a protector in place (unoccluded), are recorded. For consistency, five impulses are electronically captured and their waveforms analyzed to obtain the real and imaginary components necessary to calculate an acoustic transfer function. This transfer function will be used to transform the free-field impulse waveforms to their equivalent impulses at the IATF during the conduct of occluded tests. This impulse calibration and transformation is essential to the determination of a hearing protector's effectiveness in high sound level impulse environments.

The second part of the proposed test procedure is the determination of the peak sound reduction provided by a hearing protector for different peak impulse levels. For this part of the procedure, three ranges of impulsive sound levels are required: 130 to 134, 148 to 152 and 166 to 170 dBA peak sound pressure level. The specified ranges of impulse sound levels approximate the peak impulse levels created by a wide variety of everyday sources e.g. pneumatic tools, powder-

¹⁴ Parmentier, G., Dancer, A., Buck, K., Kronenberger, G., and Beck, C. (2000). "Artificial Head (ATF) for Evaluation of Hearing Protectors," *Acta Acustica* 86(5), 847–852.

actuated tools, construction equipment, firearms and fireworks.

The hearing protector is installed on the IATF, the particular SPL range is selected and the impulse sound source is activated. The free field and IATF impulse waveforms are electronically captured simultaneously with their respective microphones. The Agency has determined that for each sample type a minimum of five protectors will be tested. Each protector will be removed and refitted on the IATF for testing at each of the three impulse SPL ranges.

The third part of the proposed procedure is the calculation of the impulse sound reduction. The transfer function computed from the calibration waveforms is used to transform the free-field impulses to their counterparts at the location of the IATF microphone, absent the acoustic disturbances that result from the IATF. The transfer function effectively yields a filter that adjusts both the frequency amplitude response and the phase response of the free-field wave to account for differences due to the response of the ear simulator and resonance of the IATF ear canal. The waveforms from the IATF measured underneath the hearing protector and the transformed free-field waveforms are evaluated to identify the maximum peak sound pressures in both pairs of waveforms. The difference in decibels yields the peak reduction for a single trial of a protector and impulse SPL range. Once each of the waveform pairs has been evaluated, the maximum and minimum peak sound reductions across the range of levels would be determined for use in developing the NRRs.

d. Computation of the Noise Reduction Rating (NRR)

Manufacturers of amplitude sensitive devices are required to measure the passive REAT performance levels under the device with the electronics turned on and turned off for all test subjects. For ear muffs and helmets, where it is possible to use the MIRE technique, the levels will be measured for all test subjects. For ear plugs, the testing lab is required to perform repeated placement and replacement fittings of the device on the acoustic test fixture. The laboratory must conduct as many repeated measurements as required for the number of subjects tested.

VII. Noise Reduction Rating Strategies

This proposed regulation sets forth a new rating scheme that, while preserving the current NRR rating metric (e.g. a numeric rating of effectiveness), is expanded to provide

the ultimate user and hearing conservation specialist with additional information regarding the potential range of protector effectiveness based on the users' ability to achieve proper fit.

The single number Noise Reduction Rating has been the focus of attention since promulgation of 40 CFR Part 211 subpart B, in 1979. Initial concerns ranged from a lack of understanding of the relationship between NRR and hearing protection, to concerns that such numeric ratings would result in a "rating war" within the hearing protector industry. While both situations have occurred intermittently since 1979, the user population has become increasingly informed in the use of the NRR, particularly the hearing conservation community. Manufacturers have concluded, for the most part, that products of like designs are very close in performance. Thus, marketing skills and pricing are the major influences affecting market share.

The EPA has paid considerable attention to the "user-friendly" elements of the required label. The Workshop Report served to provide valuable suggestions for improvement. The Agency recognizes that the user community encompasses a wide range of applications from very infrequent use (home shop tools & lawn care) to daily use (workplace). Consequently, a user-friendly label must satisfy the needs and levels of understanding across this broad spectrum of applications. To this end, the Agency is proposing a significant change to the label content and numerical rating scheme, while retaining the now-familiar NRR acronym.

A. HPD Rating Scheme

The significant change in NRR, as proposed here, introduces a *range* of protection rather than a single value as required in the current regulation, in recognition of the fact that users may fit the device differently and thus obtain greater or lesser levels of protection than would be indicated by the single value NRR. The NRR is determined from the results of standardized tests using a representative sampling of human test subjects. The range is anchored by two NRR values that represent the "lesser" and "greater" levels of protection that a user may expect when the product is used as instructed by the manufacturer. The range of assumed protection is determined from sound attenuation measurements for narrow band noises centered at octave-band center frequencies from 125 to 8000 Hz. The resultant measured attenuations for each test subject are used to develop a statistical rating (20 subjects for all

devices except earmuffs and helmets which use 10 subjects). The lesser sound attenuation rating estimates the protection achieved by at least 80 percent of the test subjects (80th percentile). The greater sound attenuation rating estimates the protection achieved by at least 20 percent of the test subjects (20th percentile).

B. Labeled NRR Values

The diversity of hearing protector designs and intended uses is significantly greater today than 30 years ago when HPDs were predominantly passive. Today's devices incorporate specially formulated materials, ergonomic designs, sophisticated electronic circuitry and selective acoustic performance that provide hearing protection in a broad range of noise environments. In order to provide the ultimate user with information that will allow product selection based upon the user's intended noise environment, the EPA has developed three separate NRR labeling schemes as presented below:

1. Passive Hearing Protector: All hearing protectors provide a "passive" mode of protection against continuous noise. Therefore, EPA is proposing that the passive effectiveness of all HPDs be tested and rated. The passive mode of operation provides a basis for comparing the effectiveness of all protectors and establishes a benchmark against which other modes of performance (i.e. electronic and mechanically actuated) alter a product's overall effectiveness. The NRR range of protection is depicted by a bar graph with end points representing the lesser and greater levels of protection.

2. Active Noise Reduction (ANR) Hearing Protector: In addition to its passive range of protection, EPA is proposing that active hearing protector devices be tested and rated in their "active" mode. The NRR range of protection in the active mode is also depicted by a bar-graph with end points representing the lesser and greater levels of protection. In this case, the label would contain two NRR ranges, one of passive mode operation, the second for active mode operation.

The Agency has been advised by various manufacturers, NIOSH and the U.S. Air Force that the most significant noise reduction offered by ANR devices will be found at lower noise frequencies. On this basis, the Agency is proposing that the active noise reduction rating for both ear muffs and ear plugs be determined for predominantly low frequency noise. The purpose of choosing the low

frequency performance is to allow the end user to understand the potential advantage of the device in a noise field where the ANR device provides its best sound reduction performance. The Agency considered having three ratings for ANR devices (Passive performance, Active with broadband noise, and Active with low frequency noise).

The EPA believes, subject to comment, that the small sound reducing benefit in broadband noise environments detracted from the real benefit afforded by these products—significant low frequency sound protection. Therefore, the Agency is proposing that labels on ANR devices only address their passive and low frequency active performance. If a manufacturer sells a product on the basis of its active noise reduction capability, then such product must be tested accordingly.

3. **Impulsive Noise Hearing Protector:** In addition to their passive range of protection, hearing protector devices that are intended for use in high-level impulsive noise environments (greater than 140 dBA), must be tested and rated in such noise environments. The label will present two NRR ranges, one for the standard passive low-level noise reduction and a second for the high-level impulsive noise reduction. The impulsive NRR range will represent the lesser and greater levels of assumed protection in such environments. If the device is an active hearing protector, it must be tested and rated in its active mode in the high impulsive noise environment. If a manufacturer sells a product on the basis of its impulsive noise reduction capability, then such product must be tested accordingly.

4. **Communication Headsets**
Incorporating Hearing Protection: Under the proposal, communication headsets would be required to have a Noise Reduction Rating label if the device is sold in whole or in part for the purpose of providing hearing protection. Communication headsets sometimes have a NRR rating but many sold in the United States do not. If a manufacturer sells a product on the basis of its acoustic noise reduction effectiveness then the Agency believes that purchasers and users of these devices are entitled to know the hearing protection that such devices offer, prior to purchase or use. EPA is also proposing that if the device incorporates active noise reduction circuitry, sound restoration circuitry and/or level limiting circuitry (i.e. is not merely a passive HPD), then the appropriate impulse noise reduction and/or active noise reduction test(s) must be conducted. The EPA believes this

testing and labeling is particularly important for communication headsets used in the general aviation industry where pilot and ground crew may experience noise exposure for extended periods.

C. Noise Reduction Rating Calculator

The Noise Reduction Rating Calculator (NRRC) is an EPA/NIOSH-designed executable program that will allow manufacturers to calculate their products' NRR's by inputting their HPD attenuation measurements, which are obtained from the testing laboratory. The NRRC will generate a NRR test report. The intent of the NRRC is to afford manufacturers the ability to verify the NRR values from the laboratory test data prior to having their products labeled. This tool is a free downloadable product that will be made available to manufacturers via the EPA Web site. The use of this tool is voluntary and will serve no other purpose than a verification mechanism of the laboratory test results and the labeled NRR values.

VIII. Label Format and Content

The Agency has received a range of comments from interested parties regarding the current required primary and secondary product labels and their content.¹⁵ The comments were relatively narrow in focus with principal attention directed at EPA's mandated statements, their technical accuracy and usefulness to both ultimate users and hearing conservation professionals. The Agency acknowledges that any *mandated* information must accurately reflect the performance and intended use of the product and do so in a manner that is understandable by the ultimate user. To this end the Agency is retaining the requirements set forth in 40 CFR, Part 211, subpart B, but is proposing significant changes to the information content, format, and mandated statements of both the primary and secondary labels.

A. Primary Label

The intent of the primary label is to provide any purchaser or user with readily visible information (on the package exterior) upon which they may make an informed decision regarding the effectiveness of the product relative to their specific hearing protection needs. To this end, the proposed regulation will require a more informative primary label that provides a range of the noise reduction

effectiveness as opposed to the single NRR value required currently. The label will identify the protector's intended function (Passive, Active, or Impulsive) and provide the respective range(s) of effectiveness afforded by the product. The range will be presented as a bar graph with endpoints representing the estimated lesser and greater levels of effectiveness. In addition, the primary label will contain an explanation of the product's intended function, use environment, and determination of levels of protection based on the effectiveness rating(s) (NRR). Where appropriate, a caution statement that speaks to the potential unintended use of the product is provided. The label will identify the manufacturer and its relevant contact information, the protector model, and the mandated EPA prohibition and regulatory authorization.

There are a number of products that fit into or over a person's ears to provide, for example, relief from sleep disturbance, prevent water entry during swimming or to enhance the listening quality of music and video dialogue presentations. While not *designed or intended* for use as hearing protection devices, their similarity in appearance to bonafide HPDs may result in their inadvertent purchase or use for hearing protection due to the marketing language on the product label. While these products may offer some level of noise reduction to the user, they are not designed nor intended for the protection of hearing and thus are not subject to this proposed regulation. However, to the extent that a product manufacturer, importer, packager or any other party introduces into U.S. commerce any product that incorporates an explicit or implicit claim that it can protect the hearing of the user, or stipulates the level of acoustic sound reduction offered by it, then such product is subject to the testing and labeling requirements of this proposed regulation.

For companies that sell their products exclusively via the internet, the primary label must be visible to the purchaser at the time of the sale to ensure that the purchaser is fully aware of the product's NRR values. The primary label would replicate the appropriate format, as identified in § 211.204-1, and be automatically downloaded to the purchaser with the sale confirmation document. This proposal implements the requirements of section 8 of the Act that "the Administrator shall by regulation require that notice be given to the prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise". This

¹⁵Reference "workshop report" in the Docket at <http://www.regulations.gov>, docket number EPA-HQ-OAR-2003-0024.

authority is not limited by the medium by which HPDs are marketed and sold.

B. Secondary Label

The intent of the secondary label is to provide an in-depth explanation to experienced users and/or hearing conservation professionals of the HPDs functional performance, noise reduction capabilities and, where appropriate, unique features. Consistent with the 1979 regulation, the secondary label is to be located within the individual product packaging or, in the case of bulk packaging, affixed to the exterior of the bulk container. In the case of the newly proposed electronic labeling, the secondary label must be readily viewable on the manufacturer's web-page along with the primary label and be automatically downloaded to the purchaser with the sale confirmation document. The secondary label would include various mandatory data tables, product performance graphics, examples of calculations to determine specific levels of protection and information regarding the products use and limitations.

The Agency is proposing the following product specific information and mandatory statements:

1. All devices (PASSIVE mode): provide the products octave band attenuation and standard deviations and graphical and tabular presentations of the variability of the products NRR for different frequency spectra (Spectral Balance). This information is important to hearing conservation programs where protection is selected to reduce user exposure to particular sounds in the noise environment.

2. All devices (PASSIVE mode): provide the statement "When this device is used as instructed, the approximate range of noise levels entering a user's ears may be determined by the differences between the lesser and greater NRRs and the A-weighted environmental noise level."

3. ACTIVE devices: provide the variability of the NRR with spectral balance for the device operating in its PASSIVE and ACTIVE modes (electronics turned on and off).

4. ACTIVE devices: provide the following statement "When this device is used as instructed and operated in its passive mode, the level of noise entering a person's ears is approximated by the differences between the A-weighted environmental noise level and the lesser and greater PASSIVE NRRs. When this device is operated in its active mode, the level of noise entering a person's ears is approximated by the difference between the A-weighted environmental

noise level and the lesser and greater ACTIVE NRRs."

5. ACTIVE devices: provide the statement "This device, in its ACTIVE mode, is recommended for use in environmental noise levels from X to Y dBA." X and Y are to be designated by the manufacturer since only the manufacturer knows the design limitations of the noise cancellation or sound augmentation of the electronic circuitry incorporated in the device.

6. IMPULSIVE devices: provide a graphical and tabular presentation of the impulsive noise reduction for impulses with peak sound pressure levels that range between 130 and 170 dBA sound pressure level (re 20 μ Pa). This peak sound pressure range is designated by the testing protocol that is set forth in the proposed regulation. Testing to peak sound pressure levels in excess of 170 dBA would require specialized equipment and testing environment which may not be readily available to commercial testing laboratories.

7. IMPULSIVE devices: provide the statement "This device is recommended for use in impulsive noise environments having peak levels from 130 to X dBA SPL." The Agency acknowledges that products are available for use in impulsive noise environments that exceed the maximum sound pressure level specified in the proposed regulation. Consequently, testing and labeling for levels in excess of the 170 dBA will be allowed provided the manufacturer designates the upper noise limit (X dB) and the test protocol that was used to determine the effectiveness rating (NRR).

8. IMPULSIVE devices: for reasons stated in numbers 6 and 7 above this statement must be provided "Caution: This device is not intended for use in impulsive noise environments exceeding X dBA peak sound pressure levels (as determined by the manufacturer). Repeated exposures to high peak impulsive sound pressure levels may result in hearing loss."

9. Devices that have not been tested for impulse noise reduction rating: provide the statement "The PASSIVE Noise Reduction Rating is based on the attenuation of continuous noise and is not an accurate indicator of the protection attainable against impulsive noise. The IMPULSIVE Noise Reduction Rating is based on the attenuation of high-level impulsive noise and is not an accurate indicator of the protection attainable for continuous noise."

10. All devices except IMPULSIVE: provide the statement "Caution: For predominantly low frequency noise environments in which the difference in the measured C-weighted and A-

weighted noise levels (dBC-dBA) exceeds 3 dB, the user should refer to the enclosed graph of the variability of noise reduction with noise spectra to determine the level of protection."

IX. Compliance Requirements

EPA is proposing that all hearing protection devices manufactured after the effective date of this regulation, and meeting the applicability requirements of section IV, must be labeled prior to entry into U.S. commerce. The Noise Reduction Ratings, as determined by the designated test procedure, must be readily visible to the purchaser or the ultimate user, on the exterior of the HPD package, bulk container or at its point of sale. The advent of the internet has introduced a new "point of sale" of products to the public. In recognition of this new sales mechanism the EPA is proposing to allow "electronic labeling" of hearing protector devices that are sold exclusively via the internet. As noted above, regulating the content of electronic labels is consistent with EPA's broad authority to give users notice of noise levels and HPD effectiveness. Moreover, although the Act's labeling requirements refer to labels being affixed to a product or its container, the requirement that these electronic labels be provided to users at the time of sale is equivalent to labels being affixed to the product—fulfilling the Act's evident purpose of providing users with needed information at the time of sale so as to allow for a considered decision. The proposed electronic labeling must comply with all provisions attendant to both the "primary" and "secondary" labels.

A. Transition Testing Requirements

The proposed regulation will require testing and labeling procedures significantly different than required by the 1979 regulation. Consequently, after the effective date of this regulation all HPDs must be tested to determine their respective NRRs in accordance with these new test protocols. Testing will be conducted on protectors selected from the product lot (batch) of protectors that are scheduled for entry into commerce on or after the date of the transition test. The manufacturer will be required to submit the test results to the Agency within ten (10) business days of the transition test date. The Agency recognizes that the industry is composed of manufacturers that have single or multiple HPD product lines with various functions that will need to be tested. The Agency identified approximately 1,029 different HPD products currently for sale in the U.S., including 403 models of earplugs or

semi-aural devices, 572 models of earmuffs sold either alone or incorporated into communication headsets and 54 models of active noise reduction devices. Of these 1,029 HPDs, an additional impulse noise reduction test would be required for approximately 156 products.

Based on information obtained from industry sources, the EPA estimates approximately 20 percent of the products will be tested in-house by their respective manufacturers. The approximately 80 percent of remaining products are expected to be tested by two independent testing laboratories and by two manufacturer laboratories that test for fee. Based on information from both in-house and independent testing laboratories, the Agency estimates the testing capacity for a single laboratory to be between 150 and 200 products per year.¹⁶ Assuming there are 1,029 existing HPDs plus an arbitrarily estimated 50 new products to be tested and labeled, the average yearly demand on each of the four testing laboratories would be about 108 products. Consequently, the Agency believes that the available testing laboratories can carry out all required transition testing within thirty (30) months from the effective date of this proposed rule. In addition, we believe that a period of thirty (30) months from the effective date of this proposed rule will provide adequate time for manufacturers to deplete their inventories of product that was tested and labeled pursuant to the 1979 regulation. Since manufacturers have discretion to select the order in which their products are to be tested and labeled, we believe that full compliance with the proposed rule can be achieved within thirty (30) months without any disruption in the availability of any product category.

B. Recurrent Testing Requirements

The current regulation requires that HPDs be tested and rated only once in the lifetime of the product category. While a manufacturer may claim that a specific product has not been changed from its initial design, fabrication/assembly technique or materials, the EPA believes that economic factors associated with any one or combination of these elements can produce changes in product performance.

EPA is proposing to require recurrent testing for all product categories subject to this proposed regulation. The

purpose of recurrent testing is to provide a comparison of effectiveness ratings of a product over a period of time and to ensure that product labels accurately reflect current effectiveness. To insure the continuing validity of the effectiveness rating (NRR) and to recognize changes in product design or use, manufacturers will be required to retest their products on a periodic basis and to relabel as necessary. For the purpose of the cost analysis two recurrent testing periods, three and five years were considered.

Relabeling of a protector would be required if the recurrent test yields a lesser and/or greater NRR that is more than 3 dB different from the corresponding transition or new product NRR values given on the product label. The basis for a 3-dB criterion to initiate the relabeling requirement is two fold. First, a 3-dB change in attenuation can either double or halve the effective protection of a device. Second, the variability of the effectiveness rating for earplugs and earmuffs was found to be approximately 3 dB according to the EPA/NIOSH interlaboratory study.¹⁷ To this end the Agency is proposing that all HPDs be retested every five (5) years after the date of their respective transition test and each recurrent test thereafter. Since it is believed that manufacturers will time-stream the testing of their product categories, the first recurrent test could occur as early as approximately sixty-one (61) months and as long as ninety (90) months after the effective date of this proposed regulation.

The Agency believes that linking the recurrent testing to the transition test and subsequent recurrent tests, rather than the effective date of the regulation, will allow manufacturers to stagger their testing and thus minimize testing burdens during any one period of time. For the purpose of recurrent testing, protectors would be selected by the manufacturer from the product lot (batch) of protectors that are scheduled for entry into commerce on the date of the required recurrent test.

C. Product Change Retesting Requirement

The Agency recognized in its current regulation that manufacturers may make product changes to take advantage of new materials, lower cost materials, more efficient manufacturing processes, etc. While the EPA supports any product change that may improve

product performance, it has concern that such changes could serve to degrade product performance from its initial state. Therefore, the Agency is proposing to continue the product retest requirement if the manufacturer alters the product design, product materials, manufacturing process or takes any action that may alter the noise reduction performance of the product from its previous test state. Relabeling would be required if the recurrent test yields a lesser and/or greater NRR value(s) that differs by more than 3 dB from the current NRR value(s) given on the product label. The manufacturer will be required to submit the test results to the Agency within ten (10) business days of the change testing date.

D. Compliance Audit Testing

In the 1979 regulation, the EPA defined the basis on which the Administrator may order verification of the claimed performance of a product. Since the Agency is proposing mandatory retesting of all HPDs entering United States commerce, it is anticipated that an administrative order for verification testing will only be required in those cases where there is a reasonable basis to believe a manufacturer (or any party entering HPDs into U.S. commerce) or particular product is not in compliance with all requirements of the proposed rule. In such case, the compliance audit testing requirements of Subpart B, § 211.212 would be ordered by the Administrator. Nothing herein, however, restricts the Administrator's authority under section 13 of the Noise Control Act. [42 U.S.C. 4912]

E. Maintenance of records and submittal of information

The 1979 regulation required manufacturers, which include any party that enters a hearing protection device into commerce in the United States, to establish, maintain and retain adequately organized and indexed records that provide the basis for the claimed NRR values. These records included, in part:

1. Identification and description by category parameters of protectors comprising the manufacturer's product line.

2. A complete record of all noise attenuation tests performed including all individual worksheets, and other documentation relating to each test required by the Federal test procedure.

3. A description of any test procedures, other than those contained in this regulation, used to perform noise attenuation tests on any protector, and the results of those tests.

¹⁶ U.S. Environmental Protection Agency. 2008. Cost Analysis for Proposed Labeling Regulation of Hearing Protection Device Industry. EC/R Inc. Chapel Hill, NC.

¹⁷ National Institute for Occupational Safety and Health (NIOSH)/EPA Interlab Study Comparison of ANSI S12.6, Method A and B. Refer to the Federal Docket at <http://www.regulations.gov>, docket number EPA-HQ-OAR-2003-0024.

4. A record, signed by an authorized representative of the testing laboratory, of any calibration that was performed during testing by the test laboratory.

The manufacturer was able to fulfill this record retention requirement by keeping a copy of the labeling verification report. In addition, the current regulation limited testing to once in a product's lifetime unless altered by design, materials or construction. This rather simplistic record keeping scheme was appropriate at a time when protectors were primarily designed as "passive" devices, prior to the advent of a plethora of new technology devices that will be available in the marketplace as a result of this proposed regulation.

The Agency has determined that the complexity of device designs, their multi-mode performance and diverse testing protocols dictate the need for periodic retesting as discussed previously. In order to establish reliable baseline performance information for each device against which future performance can be compared, the EPA is proposing the manufacturer provide the Agency with their product test information, according to § 211.209-1, following each required product test. As required by the 1979 regulation, the manufacturer would still retain all required records for a period corresponding to the time interval specified by the *recurrent testing* schedule. Records may be retained as electronic or hard copy or reduced to microfilm, or other forms of data storage depending on the record retention procedures of the manufacturer. The manufacturer must submit to the EPA, in electronic or hardcopy format, a copy of all measurement information, test results and calculated *lesser* and *greater* NRRs obtained from the testing laboratory for each product or product category within ten (10) business days of completion of the required test. These test data would be maintained by EPA in the docket for this regulation and be available for public review.

X. Cost Impact Analysis

As part of EPA's analysis in determining the feasibility and reasonableness of this proposal, EPA has carefully assessed its projected costs. Various Agency, Executive Office and Congressional policies, orders and mandates, respectively, specify the required analyses. The EPA's Economic Analysis Resource Document provides

guidance for economic analyses that support rulemaking.¹⁸

A traditional benefit-cost analysis for HPD labeling is not possible due to the diverse makeup of the user population and its use practices that preclude quantification. Because a major percentage of the 2.1 billion HPDs purchased annually by industry are disposable earplugs (approximately 1.94 billion), the numbers strongly suggest that a "workplace" user may dispose of many pairs per day. This user practice does not lend itself to using product sales to quantify the user population that is requisite to a benefit-cost analysis. While the practice of disposal does not extend to the earmuff type HPD or to those HPDs that incorporate electrical or mechanical systems and thus are more costly, a benefit-cost analysis based on this latter user population would not be representative of the principal user population.

Further, while product use inside the workplace may be mandatory in some sectors where they serve as alternatives to engineering solutions to employee noise exposure, HPD use may be voluntary in others; they are totally discretionary in the non-industrial sector, i.e., recreational activities, home workshop, home lawn care, etc.

Finally, because the effectiveness of an HPD depends on the user's ability to "install" or fit the product as instructed by the manufacturer, it is difficult to estimate the level of hearing damage or loss avoided through the use of any specific product.

In light of the above impediments to a traditional benefit-cost analysis, the EPA has carried out a cost impact analysis. This analysis indicates that the estimated cost impact of the proposed rule change will be well below the \$100 million annual economic impact threshold that would trigger a benefit-cost analysis under Executive Order 12866.

The purpose of this cost impact analysis is to assess the costs which would be imposed by changes to the testing and labeling requirements and to evaluate the impacts of these costs on all parties subject to this regulation with particular emphasis on potential cost impacts on small businesses. The following sections provide a summary profile of the HPD industry and an assessment of those anticipated costs and potential economic impacts that are attendant to the proposed revisions. The detailed cost analysis report, entitled "*Cost Analysis for Proposed Labeling*

Regulation of the Hearing Protection Device Industry,"¹⁹ is hereinafter referred to as the cost analysis report.

A. Industry Profile

The direct economic impacts of revisions to the labeling requirements will apply to all HPD manufacturers (as defined in § 211.203 of subpart B) that enter their products into U.S. commerce. Consequently, the potential cost impact could extend to foreign manufacturers that export to the United States, non-manufacturing packagers, and testing laboratories because the revisions include revised or new test methods. The following sections describe HPD products and markets, outline the market structure of this industry, and provide currently available information on HPD sales volumes in the U.S.

1. Markets

The main applications for hearing protection devices are in occupational settings, such as in industrial workplaces, military, law enforcement, forestry and landscaping, by musicians, in home hobby workshops and lawn garden activities and the aviation community. In the industrial workplace HPDs are frequently used in lieu of engineering controls, to comply with maximum employee noise exposure standards set by the OSHA. Absent engineering noise control measures or severe time limitations on employee exposure, there are no substitutes for HPDs to reduce human noise exposure. As stated previously, the Agency determined that the industrial sector purchases approximately 2.1 billion HPDs annually. The breakdown by product type is approximately 1.94 billion disposable earplugs, 155 million reusable earplugs, 2.4 million semi-aural inserts, and 3 million earmuffs. Although a detailed count of hearing protector types and quantities was not possible for the non-industrial sector, including the military and law enforcement, discussions with major U.S. manufacturers suggests this sector accounts for an additional 1.9 billion units annually. Thus, the combined industry and commercial market is estimated at approximately 4 billion units annually.

Within the HPD categories, the choice of an ear plug, ear muff, or semi-aural device is largely dependent on the assumed level of protection, as indicated by the product NRR, cost, personal comfort and, product care

¹⁸ U.S. Environmental Protection Agency. 1999. Economic Analysis Resource Document. RTP, NC: EPA.

¹⁹ The referenced report can be found in the Docket at <http://www.regulations.gov>, docket number EPA-HQ-OAR-2003-0024.

requirements. For the general public the three types of HPDs can be easily substituted depending on user preference. However, for industrial workers the specific characteristics of the noise environment may dictate the appropriate HPD to comply with OSHA exposure requirements.

2. Product Sales Volume

The Frost & Sullivan market research group has estimated total sales of HPDs for the industrial market in the U.S. at \$242.9 million.²⁰ Table A-1 presents the estimated breakdown of the industrial HPD market among earplugs, semi-aural devices, and earmuffs, giving the estimated average wholesale price for each of these product types. As noted, earplugs account for about 75 percent of the industrial market, earmuffs account for about 20 percent and semi-aural devices account for about 5 percent. Frost & Sullivan has estimated the average unit prices of HPDs at \$0.06–0.07 for disposable earplugs, \$0.36 for reusable earplugs, \$5 for semi-aural devices, and \$16 for earmuffs.

The Frost & Sullivan estimates do not include military or consumer uses of HPDs; consequently, monetary size of these markets was not available. However, based on limited information the Agency obtained from visits to various HPD manufacturers, it estimates the commercial/military market to be approximately 89 percent of the industrial market. It was not possible to obtain a breakdown of product categories, as in the case of the industrial market. However, the Agency

believes that a conservative estimate of the total sales of HPDs for the commercial/military market in the U.S. to be \$216.2 million.

Information is not available on the size of the market for active noise reduction (ANR) HPDs or for communication headsets that also serve as HPD's; under the 1979 regulation these products cannot be sold as "hearing protection devices." However, the Agency believes some sales of these devices may be included in the estimate of earmuffs produced for the industrial hearing protection, the music entertainment, and the aviation markets.

TABLE A-1—ESTIMATED SALES OF HPD FOR INDUSTRIAL APPLICATIONS IN 2004^a

Product type	Total U.S. industrial sales (million \$)	Average wholesale price per unit (\$)
Disposable earplugs	126.3	0.06–0.07
Reusable earplugs	55.9	0.36
Semi-aural in-serts	12.1	5
Earmuffs	48.6	16
Total	242.9	.....

^a Source: Frost & Sullivan.³

3. Industry Categorization

The U.S. Census Bureau compiles economic statistics for manufacturing and trade sectors in the U.S. using the North American Industrial Classification System (NAICS), which

has replaced the earlier Standard Industrial Classification (SIC) system. The NAICS and SIC codes can be used to retrieve company financial information from various market databases, such as Dun and Bradstreet and Thomas Register.

The NAICS system includes HPD manufacturing and other personal safety manufacturing under the general miscellaneous manufacturing category 339113, "Miscellaneous Manufacturing—Surgical Appliance and Supplies Manufacture." Specifically, subcategory 3391136 within this category covers "Personal Industrial and Non-industrial Safety Equipment and Clothing," including "personal noise protector manufacturing." Similarly, the SIC system classified HPD manufacturing under category 3842, "Orthopedic, Prosthetic, and Surgical Appliances and Supplies," and subcategory 38423, "Personal Industrial Safety Devices."

Most manufacturers of HPDs list the general miscellaneous manufacturing category 339113 as their primary NAICS code. However, some manufacturers also manufacture other products, and determine their primary NAICS on the basis of these other products. For instance, many manufacturers of noise cancellation devices are also manufacturers of other electronic equipment. Similarly, some manufacturers of foam-based earplugs define their NAICS code based on the manufacture of polymer products. Table A-2 lists the various NAICS and SIC codes used by HPD manufacturers and distributors.

TABLE A-2—NAICS AND SIC CODES GIVEN BY MANUFACTURERS AND WHOLESALERS OF HEARING PROTECTION DEVICES ^a

NAICS code	SIC code	Description	Number of companies
Manufacturers			
339113	3842	Surgical Appliance and Supplies Manufacturing	22
334290	3669	Other Communications Equipment Manufacturing	4
334310	3651	Audio and Video Equipment Manufacturing	2
326112	3089	Plastics Packaging Film and Sheet (including Laminated) Manufacturing.	2
325212	2822	Synthetic Rubber Manufacturing	1
334514	3824	Totalizing Fluid Meter and Counting Device Manufacturing.	1
339932	3944	Game, Toy, and Children's Vehicle Manufacturing.	1
334220	3663	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	1
334419	3679	Other Electronic Component Manufacturing	1
339111	3821	Laboratory Apparatus and Furniture Manufacturing.	1
325211	2821	Plastics Material and Resin Manufacturing	1

²⁰Frost & Sullivan. 2005. U.S. Markets for Industrial Hearing Protection Products.

TABLE A-2—NAICS AND SIC CODES GIVEN BY MANUFACTURERS AND WHOLESALERS OF HEARING PROTECTION DEVICES^a—Continued

NAICS code	SIC code	Description	Number of companies
333514	3544	Special Die and Tool, Die Set, Jig, and Fixture Manufacturing.	1
339115	3851	Ophthalmic Goods Manufacturing	1
Wholesalers			
423450	5047	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers.	3
423990	5099	Other Miscellaneous Durable Goods Merchant Wholesalers.	1
423860	5088	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.	1
423840	5085	Industrial Supplies Merchant Wholesalers	1
541710	8731	Research and Development in the Physical, Engineering, and Life Sciences.	1
423	5065	Wholesalers of Electronic Parts and Equipment	1

^a Source: Dunn and Bradstreet database.

4. U.S. Manufacturers

The EPA has identified 96 companies that it believes to be suppliers of HPDs in the U.S. market under their own brand names. Of the 96 companies, 34 produce or sell only one or two products. Another 31 companies produce or sell 3 to 10 products, and the remaining 31 companies produce or sell more than 10 different products. These products may be of the same category, i.e. ear plugs, ear muffs, ANR, or impulsive or encompass all categories. This list was compiled from the NIOSH Hearing Protection Device Compendium,²¹ trade association directories and buyer's guides and from market databases. A search of the internet was also conducted to identify companies advertising themselves as manufacturers of HPDs. The International Safety Equipment Association (ISEA) provided the Agency with information regarding private labeling of products from various major HPD manufacturers. A list of these manufacturers is given in the EPA cost analysis report. Most of the manufacturers of HPDs also manufacture other personal safety equipment, such as helmets, respirators, and face shields. Manufacturers of electronic noise cancellation systems generally also manufacture other electronic equipment. Similarly, the manufacturers of communications equipment, which include built-in HPD components, generally also manufacture other electronic equipment such as communications equipment.

²¹ Franks JR, Graydon PS, Jeng C, Murphy WJ, "NIOSH Hearing Protector Device Compendium," http://www2d.cdc.gov/hp-devices/hp_srchpg01.asp (2003), as of July 6, 2008.

Although there are many manufacturers supplying the HPD market in the U.S., available information suggests the industrial HPD market is dominated by a small number of companies. Frost & Sullivan estimates that three companies account for about 78 percent of the industrial HPD market. The Agency was unable to quantify market share for the commercial/military HPD market.

This type of market structure, with a small number of suppliers accounting for most of the industrial HPD market, is termed an oligopoly, where prices generally remain relatively stable. If one of the three major firms drops its price, all other firms will quickly follow suit and equilibrium is re-established without any change in market share. If a firm chooses to increase its price, the other firms will stay where they are and quickly take a portion of the original firm's market share. Thus, firms tend to keep their prices at a stable level, as evidenced by the fact that average prices of HPDs have been stable from 2001–2004.²² However, some manufacturers serve niche markets, such as custom-fit or special needs hearing protector devices, i.e. helmets, where they may have flexibility to raise prices and pass along regulatory costs due to limited competition.

5. Distributors and Packagers

Manufacturers of HPDs generally sell their products to distributors of safety equipment or industrial supplies, rather than directly to industrial users. According to the Thomas Register there are at least 220 distributors in the

²² Frost & Sullivan. 2005. *U.S. Markets for Industrial Hearing Protection Products.*

United States,²³ resulting in a less concentrated market than that of manufacturers.

NIOSH estimated there are at least 20 packagers, or "private labelers," of HPDs in the U.S.²⁴ In many cases the primary manufacturer will package his product with the private label of a distributor or retailer such as supermarkets and home supply chains. In other cases the packagers or private labelers will purchase, in bulk, HPDs that they then package under their private label in smaller quantities or as individual pairs of HPDs for retail sale. Some private labelers go so far as to change the color of their product from that of the original manufacturer in order to establish or preserve their private brand identity.

6. Imports to the U.S.

A number of foreign manufacturers supply HPDs to the U.S. industrial and consumer markets. EPA has identified seven manufacturers in Canada and Europe and 18 manufacturers in Asia.²⁵ The Agency believes there may be others but is unable to obtain a reliable identification or count.

The International Trade Administration (ITA) publishes statistics on imports and exports for different NAICS codes. Total U.S. imports for NAICS code 339113 in 2004, were estimated at \$4.7 billion.²⁵

²³ Thomas Publishing (Thomas Register), *ThomasNet: Hearing Protection Devices*, Accessed July 31, 2007, <http://www.thomasnet.com>

²⁴ Telephone Contact Report. Deering, A., EC/R Incorporated, with Graydon, P., NIOSH. September 20, 2004.

²⁵ International Trade Administration. 339113 *Surgical Appliance & Supplies: Customs Value by Customs Value for ALL Countries.* <http://>

However, this figure is not restricted to HPDs and includes other personal safety equipment, clothing, and surgical supplies. For comparison, the total volume of shipments in 2001 for domestic manufacturers in NAICS code 339113 was approximately \$18.9 billion.²⁶ Thus, imports are about 25 percent of domestic production for the overall NAICS category (including HPDs, other safety equipment, and surgical supplies). The majority of the imports in NAICS code 339113 are from Mexico, China, Taiwan, and Canada.

The impact of these foreign imports on the U.S. market is unclear as the quantity imported to the U.S. cannot be readily determined. Considering that three or four companies hold the larger market share of industrial HPDs, the impact of foreign manufacturers on the industrial market is believed to be small. The Agency believes these latter imports are primarily directed toward

the public consumer market through retailers.

7. U.S. Exports

Exports from the U.S. in 2004 for NAICS code 339113 have been estimated at \$4.8 billion.²⁷ This is about 25 percent of estimated total domestic production in that category.²⁸ However, as noted previously, this category includes a number of products in addition to HPDs.

B. Costs of Production

The U.S. Census Bureau compiles information on production costs and income for manufacturing industries in the U.S. The Census's *Manufacturing* series gives estimates of production costs for various industrial categories and subcategories. Table B-1 presents cost estimates for NAICS code 339113, which covers surgical appliance and supplies manufacturing and personal

safety equipment. In addition, the table shows the estimated cost breakdown for the "Personal Industrial and Nonindustrial Safety Equipment and Clothing" subcategory (coded as subcategory 3391136). Production costs in this category are estimated as 18 percent of sales for labor, 47 percent for materials, and 3 percent for capital investment.²⁹ However, these costs may not include certain elements, such as cost of sales.

The Census's *Quarterly Financial Report* series gives income estimates and other financial information for broader industrial categories. In this series, information is available at the level of NAICS code 339, "Miscellaneous Manufacturing." Within this category, estimated income from operations in 2006 was 11.4 percent of net sales. For small companies in this category, estimated income was 5.1 percent of net sales.³⁰

TABLE B-1—ESTIMATED COSTS OF PRODUCTION AND NET INCOME AS A FRACTION OF SALES FOR SAFETY EQUIPMENT MANUFACTURE AND MISCELLANEOUS MANUFACTURE^a

Quantity	Estimated costs and income as a fraction of the total value of shipments (%)					
	NAICS code	Labor cost	Cost of materials	Capital investment	Total costs ^b	Income from operation
Surgical Appliance and Supplies Manufacture (including personal safety equipment)	339113	18	30	3	51	
Personal industrial and nonindustrial safety equipment and clothing subcategory	3391136	18	47	3	68	
All miscellaneous manufacturing, all companies	339	.....	.....	.....	.....	11.4
Small miscellaneous manufacturing ^c	339	.....	.....	.....	.....	5.1

^a Source: Census Bureau

^b These costs include labor, materials, and capital investment. Certain other costs such as costs of sales may not be included.

^c For the purposes of this Census survey, small companies have been defined as companies with less than \$25 million of assets.

1. Hearing Protector Testing Laboratories

The 1979 regulation requires the devices be tested to determine their effectiveness. As stated previously, under the current rule, product effectiveness testing is required only once in a product's life unless the product is altered in a way that may affect its sound reduction performance. EPA is proposing to require new test methods and recurrent testing throughout a product's life to ensure the continuing accuracy of the labeled NRRs and other performance properties.

Table B-2 provides a list of eight laboratories in the U.S. that perform the ANSI S3.19 tests required by the current regulation. The EPA believes that these laboratories will continue to test HPDs in accordance with the new ANSI S12.6 standard specified in this proposed regulation. Four laboratories currently perform tests on a commercial basis for a fee; two are owned and operated by HPD manufacturers; and two are independent testing laboratories. The remaining four are U.S. government laboratories and, at this time, do not conduct testing for commercial organizations on a fee basis. However, the Agency believes that the new

requirement for *recurrent* testing will stimulate the entry of additional testing laboratories to the market.

Three of the laboratories listed below are accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) managed by the National Institute of Standards and Technology (NIST).³¹ This accreditation, although not required by the EPA, is used by some companies in their advertisements to give increased credibility to their reported NRR values as compared to their non-accredited competition. The EPA is not requiring NVLAP accreditation of testing laboratories in this proposed regulation

www.ita.doc.gov/td/health/imp339113.htm
Accessed October 17, 2007.

²⁶ International Trade Administration, *Surgical Appliances and Supplies Manufacturing (NAICS 339113)*, http://www.ita.doc.gov/td/industry/otea/industry_sector/tables_naics/339113.htm

²⁷ International Trade Administration, *339113 Surgical Appliance and Supplies: U.S. Domestic Exports*, <http://www.ita.doc.gov/td/health/exp339113.html> Accessed October 17, 2007.

²⁸ International Trade Administration, *339113 Surgical Appliance and Supplies: U.S. Domestic Exports*, <http://www.ita.doc.gov/td/health/exp339113.html> Accessed October 17, 2007.

²⁹ U.S. Census Bureau, *2002 Economic Census, Manufacturing Industry Series: Surgical Appliance and Supplies Manufacturing, EC02-311-339113 (RV)*, 2002, <http://www.census.gov/prod/ec01/ec023li339113.pdf>.

³⁰ U.S. Census Bureau, *Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations, QFR/06-Q1, 2006*, <http://www.census.gov/prod/2006pubs/qfr06q1.pdf>.

³¹ Faison, C. Douglas, *What is the National Institute of Standards and Technology. National Voluntary Laboratory Accreditation Program (NVLAP)?* May 2006. <http://ts.nist.gov/Standards/upload/What-is-the-NVLAP.pdf>.

because it does not believe that such accreditation significantly enhances the technical qualifications of the laboratory to carry out the required tests nor the

quality of the test results. More important, the Agency believes that the initial and recurring annual recertification costs of such

accreditation may have a chilling effect on the entry of new testing laboratories into the market.

TABLE B-2—HEARING PROTECTION DEVICE TESTING LABORATORIES

Laboratory name	Location	NVLAP accreditation	Currently carries out testing for a fee
Aero Corporation's E-A-RCAL Acoustical Laboratory	Indianapolis, Indiana	Yes	Yes.
Howard Leight Acoustical Testing Laboratory	San Diego, California	Yes	Yes.
Michael and Associates	College Station, Pennsylvania ..	Yes	Yes.
Auditory Systems Laboratory at Virginia Polytechnic Institute and State University (Virginia Tech.)	Blacksburg, Virginia	No	* Yes.
U.S. Air Force Research Laboratory	Wright-Patterson Air Force Base, Ohio	No	No.
National Institute of Occupational Safety and Health (NIOSH) Robert Taft Laboratories	Cincinnati, Ohio	No	No.
NIOSH Pittsburgh Research Laboratories	Pittsburgh, Pennsylvania	Yes	No.
U.S. Army Aero Medical Research Laboratory	Fort Rucker, Alabama	No	No.

* The testing conducted at Virginia Polytechnic Institute is primarily focused on research.

C. Cost Analysis

To comply with the proposed rule the HPD industry will incur various costs beyond those that are attendant to the current rule. Information obtained from seven HPD manufacturers, selected as a representative cross-section of the industry, and two HPD testing laboratories, formed the initial basis for estimating the potential costs and economic effects of the proposed rule. Once word of EPA's activities to revise the current regulation was heard by interested parties, a number of additional companies volunteered information.

The questionnaire that was used in the formal interviews with the seven manufacturers and the list of companies providing information for this study are contained in the report, "Cost Analysis for Proposed Labeling Regulation of the Hearing Protection Device Industry". Information was also obtained from commercial market databases and advertising materials published by HPD manufacturers. The following sections discuss the estimated costs and potential economic effects of the revised labeling rule and the potential impacts on the HPD industry. A separate analysis of the potential cost impact on small entities is provided in section XI, paragraph C (Statutory and Executive Order Reviews) below.

This proposed regulation would require all hearing protector devices to be tested and rated using new ANSI and EPA test methods. The proposed regulation will also require periodic label verification testing (recurrent testing), that is not required by the 1979 regulation. As stated previously, EPA examined the recurring test intervals of three and five years to determine the effects on all size manufacturers. Based

on this analysis the Agency is proposing recurrent testing every five years from the date of the transition test date. As discussed above, if recurrent testing reveals changes in NRR values in excess of the 3 dB criteria the product must be relabeled. In contrast, the current regulation only requires retesting and attendant label changes if the design, composition, or manufacturing process for a product changes its measured performance.

1. Costs of Revised Testing and Labeling Requirements

The cost analysis carried out for this proposed regulation includes the following elements:

- Transition testing required for all existing HPD products using the new ANSI and EPA test methods and rating scheme.
- Labeling all existing products to incorporate the new NRR range information and new label content; applicable to both primary and secondary labels.
- Recurrent testing for all HPDs at either 3 or 5 year intervals.
- Changing the label to reflect a new NRR range of any product for which the recurrent testing yields NRRs that are significantly lower or higher than previously stated on the products label.
- Additional recordkeeping and reporting costs attendant to the periodic retests.

a. Transition Testing and Labeling Costs

Seven HPD manufacturers and two testing laboratories provided a range of estimates of the unit costs to test and label each of their HPD product lines. Some companies provided cost estimates based on their in-house test facilities. Others provided estimates

based on historic charges from independent testing laboratories. Most companies provided cost data based on the existing test method; however, some, including one independent test laboratory, provided estimates based on their experience using the new ANSI method.

Table C-1 summarizes the ranges of cost estimates for the existing test method and the new ANSI/EPA test methods. The table also presents the range of unit cost estimates developed from the information collected by this study to analyze the impacts of the proposed rule changes. Testing costs for earmuffs are given for each potential headband position. This means that if a particular earmuff can be worn with the headband in three different positions (behind-the-head, over-the-head, or under-the-chin), then three tests may be required—this analysis provides a conservative evaluation of costs since many manufacturers are expected to identify a preferred headband position. The testing cost estimates reflect the costs of testing using an outside laboratory, although several major manufacturers are expected to use their in-house testing facilities.

The costs of testing using the new ANSI/EPA methods are estimated to be somewhat higher than the costs of testing using the 1979 standard for a number of reasons, the principal one being the requirement for twice as many test subjects. Testing costs are somewhat higher for earplugs and inserts than for earmuffs because of the need to train subjects on how to correctly insert the plugs into their ears.

In addition, the table presents the cost estimates provided by the sampled companies for creating an entirely new product label to reflect the change from

a single number NRR to a range of two NRRs.

The ranges of cost estimates are quite broad, even for the existing test methods. This may be the result of changes in the unit cost of testing depending on the number of products

tested at a given time; costs do not reflect potential savings afforded by the use of test subjects for multiple product tests. Further, the relatively large cost range for testing electronic noise cancellation (ANR) systems stems, in

part, from uncertainties about the entirely new test method that is proposed here for those devices. The Agency is soliciting comment and cost estimates based on the proposed test protocols.

TABLE C-1—ESTIMATED COSTS OF TESTING AND LABELING FOR EACH PRODUCT LINE

Device type	Range of cost estimates given by industry sources (\$)	Range of estimates used in analysis (\$)
Testing:		
Existing test methods:		
Earplugs and semi-aural inserts	2,000–3,000	2,000–3,000
Earmuffs and headsets (per headband position, excluding electronic noise cancellation systems)	1,700–4,000	1,700–4,000
Revised test methods:		
Earplugs and semi-aural inserts	2,800–4,000	2,800–4,000
Earmuffs and headsets (per headband position, excluding electronic noise cancellation systems)	2,000–4,000	2,000–3,000
Electronic noise cancellation systems ³²	2,500–10,000	2,500–10,000
Impulse noise reduction ³³	2,000–4,000	2,000–4,000
Labeling:		
Initial label design and printing setup	5,000–10,000 to 25,000–48,000	5,000–10,000
Modification of a label to change the NRR	one manufacturer estimated this cost at 2,700–3,700, while others indicated that it would be the same as a complete label change.	2,700–5,000

The proposed changes in the labeling rule are expected to result in a substantial increase in the volume of product testing. First, all HPDs are to be tested in accordance with the newly proposed ANSI and EPA/NIOSH standards. A transition-testing period of thirty (30) months following the effective date of this proposed regulation is expected to reduce the workload on existing testing facilities. Second, the Agency is proposing that all products must be retested periodically at five (5) year intervals from the completion of the respective transition test; the current regulation does not require such recurrent testing and label verification. As explained above, EPA is proposing a recurrent test period of 5 years was selected to (a) provide a uniform testing period for all parties, (b) allow a longer time between transition test and first recurrent test for the less than three product line manufacturers, (c) provide manufacturers with more than two product lines adequate time to complete transition testing before first recurrent tests become necessary and (d) to amortize near-term testing costs over a reasonable period of time.

The Agency believes the increase in testing volumes may result in lower per product testing costs than the current industry estimates in Table C-1 for two

reasons. First, the Agency anticipates additional testing laboratories will enter the marketplace to satisfy the increased and continuing testing demand resulting from the recurrent testing requirement, thereby increasing price competition that may result in lower fees. Second, the increased volume may provide opportunities for improved testing efficiency due to economies of scale. However, for the purpose of this analysis, we have used the average cost estimates from Table C-1 to develop a conservative assessment.

The Agency has also considered the required redesign of the label to display the results of transition testing using the new ANSI/EPA test methods and two-value NRR effectiveness range. Most companies responding to the Agency's questionnaire estimated the cost of developing new product labels to be between \$5,000 and \$10,000 per HPD model; one company estimated these costs at \$25,000–48,000 (Table C-1). These estimates reflect design costs and fabrication of the necessary printing plates and the preparation of required revised secondary labels. The main source of variation in the cost estimates is the estimated time to develop the label design. However, since the EPA is specifying the design, format and content of the new label, the cost estimates for "creative" label designs are believed to be on the high side. Discussions with an independent source in the public relations field indicated

the cost of label design can be expected to be the lower range of estimates given by industry representatives, i.e., \$5,000–10,000.³⁴

The Agency was particularly concerned with labeling costs that may be incurred by very small manufacturers and repackagers (one or two product lines). In assessing the marketing methods of this segment of the industry, the Agency believes that their point of sale is principally via the internet. Further, their customer base is primarily individuals or small groups that purchase their products for personal use only. It is primarily for this segment of the industry that the Agency has developed and is proposing the concept of "electronic labeling." We believe that an electronic reproduction of the EPA label will eliminate the costs of art work and printing plates requisite to producing paper labels or printing on packaging for organizations that sell *exclusively* on the internet. The Agency also believes that electronic labeling will greatly simplify and reduce any future costs that would be incurred should recurrent testing dictate new NRR ratings for these small manufacturers.

In light of the proposed recurrent testing requirement, we believe that NRR effectiveness ranges may require change from time to time. In that regard

³² This cost figure includes the expense for both passive and active testing.

³³ This cost is in addition to the required passive testing.

³⁴ Personal Communication. Battye, W., EC/R Incorporated, with Erika Schmidt, The Frause Group. August 15, 2007.

we have attempted to quantify the associated cost of relabeling. One company estimated the costs of relabeling to present a revised NRR range would be somewhat lower than the costs of developing the initial new label but was unable to quantify without a definitive cost estimate for the initial new label. However, other manufacturers believed the costs would be roughly the same as those associated with the new transition label.

Table C-2 presents estimates of the nationwide costs of carrying out the transition testing in accordance with ANSI/EPA test methods. The table also presents cost estimates related to changing all existing product labels to reflect the new test results and label information. These estimates are derived using the unit costs given in Table C-1 and the estimated nationwide

numbers of HPD currently being sold. The estimates are conservative in that they do not include any estimates of cost savings that may be realized through electronic labeling. The Agency identified approximately 1,029 different HPDs currently for sale in the U.S. The HPD population is believed to consist of 403 earplugs or semi-aural passive devices, 572 passive earmuffs sold either alone or incorporated into communication headsets, 2 active noise reduction (ANR) earplugs and 52 active noise reduction (ANR) earmuffs.

As required in subpart B, § 211.206-1, all HPDs must be tested in their "passive" mode which yields 1029 separate tests. In addition, those 54 products identified as ANR will require a second test in their "active" mode. Finally, those 156 products identified as "impulsive" will require a second test

in a high intensity impulse noise environment where human test subjects are replaced by a test fixture. Consequently, 1239 separate tests must be carried out on the 1029 products. The difference between the number of HPDs given above and the actual number of tests given in Table C-2 represents products which are tested by the manufacturer and are labeled for sale by another entity which relies upon the manufacturer's effectiveness data. Foreign manufacturers that export to the U.S. are included in our estimations. Even though the testing and manufacturing costs are incurred outside the U.S., any effects on prices due to the revised regulation may be passed along to the distributors in the U.S. These distributors, as previously mentioned, may pass along the price changes to the buyer.

TABLE C-2—ESTIMATED NATIONWIDE COSTS OF TRANSITION PRODUCT EFFECTIVENESS TESTING AND LABELING

Product type	Number of HPD tests	Unit cost per HPD test (\$)	Estimated nationwide cost (\$1000)
<i>Testing</i>			
Earplugs and semi-aural inserts	375	2,000-4,000	750-1,500
Earmuffs and headsets	550	^a 2,540-3,810	1,400-2,100
Active Noise Reduction systems	108	1,250-5,000	140-540
Impulse noise reduction	156	2,000-4,000	310-620
Subtotal	1,189	.....	2,600-4,760
	Number of HPD products	Unit cost per HPD product (\$)	Estimated nationwide cost (\$1000)
<i>Labeling</i>			
Earplugs and semi-aural inserts	375	5,000-10,000	1,880-3,750
Earmuffs and headsets	550	5,000-10,000	2,750-5,500
Electronic noise cancellation systems	54	5,000-10,000	270-540
Subtotal	979	.....	4,900-9,790
Grand total .....	.....	.....	7,630-15,090

^a Based on a testing cost of \$2,000-3,000 per headband position, and an average of 1.27 headband positions per product.

The number of HPD products was estimated from reviews of manufacturer's catalogs and advertisements (as published on the Internet). In addition, the NIOSH "Hearing Protection Device Compendium" provided significant information on the HPD products sold in the U.S.³⁵

Because earmuffs may sometimes be manufactured to be worn in different head band positions, the product must be tested in each position to determine whether their performance/attenuation is changed due to the position. When

we account for the positions, and consider that each position requires another test, an average of 1.27 potential headband positions per product-line was used to estimate the number of headband position tests required for earmuffs. This factor is based on the average number of headband positions per product-line for all earmuff models included in the NIOSH Hearing Protector Device Compendium.

b. Costs of Recurrent Testing and Relabeling

Table C-3 presents estimates of costs for recurrent testing and potential relabeling of products due to measured changes in product NRR range. Unit costs of testing each HPD are the average

industry estimates shown in Table C-1. Costs have been estimated for a three (3) and five (5) year recurrent testing interval. In each case we have assumed that testing will be spread evenly over the respective time period. Thus, for the 3-year interval we assumed that one third of the HPD models will be tested each year, and for the 5-year interval, we assumed that 20 percent of HPD models would be tested each year.

Based on analysis of inter and intra laboratory variations of product recurrent tests in a recent inter-laboratory test program carried out by EPA and NIOSH,³⁶ we estimate twelve

³⁵ Franks JR, Graydon PS, Jeng C, Murphy WJ, "NIOSH Hearing Protector Device Compendium," http://www2d.cdc.gov/hp-devices/hp_srchpg01.asp (2003), as of July 6, 2008.

³⁶ Murphy W.J., Byrne D.C., Gauger D., Ahroon W.A., Berger E., Gerges S.N.Y., McKinley R., Witt

(12) percent of all HPD products will require relabeling based on recurrent tests every five years. The agencies commissioned parallel tests of six different HPD products at six different laboratories. The study provided 180 laboratory-to-laboratory comparisons of the test results; 30 for each of the six products tested. For each of these

comparisons, the average test results and the 95 percent confidence intervals for two tests of a single HPD model were determined. If the second test was lower than the first test to the extent that the two 95 percent confidence intervals did not overlap, then it was assumed that the product would need to be relabeled. This occurred in 12 percent of the

comparisons. The fraction was the same for earplugs and earmuffs. However, for reasons stated above, the Agency has selected a ± 3dB criteria rather than the 95 percent confidence interval to initiate relabeling. Therefore, for this analysis the 12 percent represents a conservative assessment of the potential cost impact.

TABLE C-3—ESTIMATED NATIONWIDE ANNUAL COSTS OF PRODUCT RECURRENT TESTING AND RELABELING FOR MANUFACTURERS

Product type	Estimated number of HPD tests per year		Unit Cost per HPD test (\$)	Estimated nationwide costs (\$1000/year)	
	3-Year interval ^a	5-Year interval ^b		3-Year interval	5-Year interval
Periodic Recurrent Testing					
Earplugs and semi-aural inserts	125.0	75.0	2,000–4,000	250–500	150–300
Earmuffs and headsets	183.3	110.0	^c 2,540–3,810	470–700	280–420
Electronic noise cancellation systems	36.0	21.6	^d 2,500–10,000	90–360	54–216
Impulse noise reduction	52.0	31.2	2,000–4,000	100–210	60–120
Subtotal	396.3	237.8	.....	910–1,770	544–1,056
Relabel as Necessary					
		Estimated number of HPD products per year			
^e Subtotal	39.2	23.5	.....	106–196	63–117
Grand total .....	.....	.....	.....	1,016–1,966	607–1,173

^a Under the 3-year recurrent test interval, one third of all HPD models are assumed to be retested each year.
^b Under the 5-year recurrent test interval, 20% of all HPD models are assumed to be retested in a given year.
^c Based on a testing cost of \$2,000–3,000 per headband position, and an average of 1.27 headband positions per product.
^d This cost figure includes both the expense for passive and active testing.
^e Based on NIOSH/EPA inter-laboratory testing, a change in the label NRR may be required for 12% of products tested in periodic effectiveness tests.
^f Based on the cost of making a simple modification to the label to change the NRR (Table 3-1).

c. Manufacturers' Costs of Reporting and Recordkeeping

Pursuant to Sec. 13 (a)(1) of the Noise Control Act, manufacturers are required to provide the EPA Administrator reports of the laboratory test results for

each HPD model. The cost of generating these reports is incorporated in the cost of product testing (as summarized in Table C-1). However, we believe manufacturers may incur limited additional costs to track and retain periodic recurrent testing reports. Table

C-4 presents estimates of the nationwide costs of these recordkeeping and reporting requirements. We have estimated that 30 minutes per product may be required for record keeping and reporting.

TABLE C-4—ESTIMATED ANNUAL ONGOING COSTS OF RECORDKEEPING AND REPORTING

Product type	Estimated number of HPD tests per year		Clerical labor per product line (hours)	Labor cost (\$/hour) ^c	Estimated nationwide costs (\$1000/year)	
	3-Year interval ^a	5-Year interval ^b			3-Year interval	5-Year interval
Earplugs and semi-aural inserts	125	75.0	0.5	31	1.9	1.2
Earmuffs and headsets	183.3	110.0	0.5	31	2.8	1.7
Electronic noise cancellation systems	18.0	10.8	0.5	31	0.3	0.2
Total	326.3	195.8	.....	.....	5.0	3.1

^a Under the 3-year recurrent testing interval, about one third of all HPD models are assumed to be retested each year.
^b Under the 5-year recurrent testing interval, about 20% of all HPD models are assumed to be retested in a given year.
^c Estimate based on Bureau of Labor Statistics information for the medical supplies manufacturing industry, hourly rates include an overhead factor (including benefits) of 100%.

d. Costs for Relabelers

Companies that relabel products manufactured by other companies for

sale under their own label or under the labels of brand name retailers may also incur labeling costs. These companies, identified as “relabelers” typically use

the results of NRR tests carried out by the products manufacturers, and therefore, are not expected to incur costs for product testing. However, they are

expected to incur costs for redesigning product labels to incorporate new NRR values and required labeling information. Table C-5 summarizes the estimated costs of compliance for these relabelers. However, no adjustments

have been made for those relabelers that sell exclusively via the internet and adopt electronic labeling. In this latter case the costs of relabeling are expected to be significantly less than those of Table C-5 since no changes will be

required for artwork or packaging. The Agency has not quantified these costs savings. Consequently, we believe the costs presented in Table C-5 to be very conservative (i.e. likely overestimated).

TABLE C-5—ESTIMATED NATIONWIDE LABELING COSTS FOR COMPANIES WHICH DO NOT MANUFACTURE HPD, BUT ONLY RELABEL PRODUCTS

Product type	Estimated number of products		Unit cost per HPD product test (\$)	Estimated nationwide costs (\$1,000)	
	3-Year interval ^a	5-Year interval ^b		3-Year interval	5-Year interval
Transition Label Costs					
Earplugs and semi-aural inserts	46		5,000-10,000	230-460	
Earmuffs and headsets	32		5,000-10,000	160-320	
Electronic noise cancellation systems	83		5,000-10,000	420-830	
Total				810-1,610	

Recurrent label costs	Products per year			Cost per year	
Earplugs and semi-aural inserts	1.8	1.1	2,700-5,000	5-9	3-6
Earmuffs and headsets	1.3	0.8	2,700-5,000	4-7	2-4
Electronic noise cancellation systems	3.3	2.0	2,700-5,000	9-17	5-10
Total				18-33	10-20

^a Under the 3-year recurrent test interval, one third of all HPD models are assumed to be retested each year.

^b Under the 5-year recurrent test interval, 20% of all HPD models are assumed to be retested in a given year.

^c Based on NIOSH/EPA inter-laboratory testing, a change in the label NRR may be required for 12% of products tested in periodic effectiveness tests.

D. Summary of Nationwide Costs of Revised HPD Labeling Rule

Table D-1 summarizes the estimated nationwide costs of the proposed revisions to the HPD labeling rule. The initial or capital costs will be primarily transition testing of all HPD products in the U.S. market on the effective date of this proposed rule. In addition, we have incorporated the amortized costs of transition product labeling to reflect the new NRR range presentation and revised user information. In the latter case, the transition labeling costs have been amortized over a 20-year period

using an interest rate of 7 percent. The transition testing costs are estimated to be between \$2.5 million and \$4.6 million and are expected to be spread over a period of 30 months from the effective date of the regulation. New labeling costs are estimated to be between \$5.1 and \$10.1 million to produce product labels with the new NRR range presentation and mandated statements. The industry provided cost estimates associated with the required secondary labels are incorporated in the total cost of labeling.

Annualized costs of the revised rule depend, in large part, on the recurrent

product testing intervals. Two options have been evaluated: A 3-year interval and a 5-year interval. As stated previously, after evaluating the two approaches, the Agency is proposing the 5-year interval for all manufacturers. Recurrent testing of products would commence 5 years from the date of completion of their respective transition test. The annualized costs include the costs of changing product labels to reflect the new NRR range of the 12% of products that fail their recurrent test and costs of reporting and recordkeeping.

TABLE D-1—TOTAL COSTS COMPARED WITH TOTAL SALES

Cost element	Estimated nationwide costs (\$1000/year)	
Manufacturers:		
Transition costs		
Product model testing ^a		2,600-4,760
Initial revisions to labels ^a		4,900-9,790
	3-Year recurrent test interval	5-Year recurrent test interval
Annualized costs		
Periodic product effectiveness tests ^b	910-1,770	544-1,056
Changing product labeling, as necessary ^c	106-196	63-117
Recordkeeping and reporting	5.0	3.1
Amortized cost of initial labeling ^{e,f}	462-924	462-924

	3-Year recurrent test interval	5-Year recurrent test interval
Total annualized costs for manufacturers	1,484–2,896	1,073–2,101
Relabelers: ^g		
Initial revisions to labels	810–1,610	
Annualized costs.		
Amortized cost of initial labeling ^{e,f}	76–152	76–152
Label changes as necessary from recurrent testing	18–33	10–20
Total annualized costs for relabelers ^g	94–185	86–172
Total annual cost	1,578–3,081	1,159–2,273
Annual cost as a fraction of total industrial product sales ^f	0.3–0.7%	0.3–0.5%

^a Table C–2 provides additional details on initial testing and labeling costs for manufacturers.

^b Product tests are assumed to be carried out at a uniform rate over the recurrent test period. (See Table C–3).

^c Based on NIOSH/EPA inter-laboratory testing, a change in the label NRR may be required for 12% of products tested in periodic effectiveness tests. (See Table C–3)

^d Costs of developing product labels to reflect the revised test methods are amortized over a 20 year period using an interest rate of 7%.

^e Annualized costs do not include the amortized costs of the initial tests, since this would double-count the first round of recurrent testing costs.

^f Total industrial product sales were obtained from Frost & Sullivan (see Table A–2). Consumer sales are believed to be minor in comparison with industrial sales.

^g Table C–5 provides additional details on costs for relabelers.

Table D–1 presents the total annualized costs of complying with the proposed labeling rule changes. These are estimated to be 0.3–0.5 percent of total industrial product sales for the 5-year interval. Industrial product sales were obtained from the Frost & Sullivan market research report, totaling \$242.9 million. Estimates developed by EPA from limited information obtained from site visits for consumer and military sales are \$216.2 million. Therefore, the estimated costs of compliance with the proposed labeling rule changes may range from 0.16 to 0.4 percent of total combined industrial, consumer and military sales.

E. Economic Impacts

Based on the results of analyses in the previous section, compliance costs associated with the proposed labeling rule changes are expected to be on average 0.3 to 0.6 percent of the total wholesale price. As noted earlier, seven HPD manufacturers were interviewed on the potential costs and economic impacts of the new labeling rule. The larger companies indicated they did not plan to pass along the costs of compliance in the prices of their products. However, some of the smaller companies indicated that they would probably pass on a portion or all of the costs of compliance to distributors and consumers.

In the event that prices are increased to cover the cost of compliance, industrial and other occupational sales of HPDs are not expected to change. These uses are generally mandated by occupational safety regulations and are not an optional purchase. Consumer purchases of HPDs are also not expected to be significantly impacted, since the

overall impact of compliance costs is a relatively small fraction of the wholesale price.

HPD manufacturers indicated they do not expect to close any operations as a result of increased compliance costs. However, most indicated they would probably discontinue some marginally profitable product lines rather than incur the associated cost of transition testing and labeling. In particular, the companies indicated that product lines which are not selling well on the current market due to their effectiveness rating, comfort, or competition may be discontinued when the new labeling rules are implemented.

F. Impacts on Small Business

Please see paragraph XI–C (Statutory and Executive Order Reviews) below.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under that Order

Although a Regulatory Impact Analysis was not required or conducted, EPA did carry out a cost impact analysis, as just set forth in the previous section. The annual effect on the economy resulting from the proposed compliance costs is estimated to be less than \$2,800,000. A copy of the “Cost Analysis for Proposed Labeling Regulation of the Hearing Protection Device Industry” is available in the docket for this action.

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 has been assigned EPA ICR number 2341.01.

Section 13 of the Act, “*Records, Reports and Information*,” states that manufacturers of products which emit noise capable of adversely affecting the public health or welfare, or which is sold wholly or in part on the basis of its effectiveness in reducing noise, shall establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with the Act.

Pursuant to this provision, the Agency proposes to collect information to ensure compliance with the provisions in this rule. EPA is also proposing recurrent testing requirements, as discussed previously. In order to establish reliable baseline performance information for each device, against which future performance can be compared, the EPA is proposing that manufacturers provide the Agency with their product test information following each required product test.

The 1979 regulation required manufacturers to establish and retain adequately organized and indexed records of the testing protocols that provide the basis for the claimed Noise Reduction Ratings (NRR) that is placed on the mandated label. The regulation also required manufacturers to submit

hearing protector test data reports for the attendant NRR to the EPA. In 1982, 40 CFR Part 211 was amended to suspend the submittal of test data reports to the EPA due to the closure of the Agency's Office of Noise Abatement and Control. However, manufacturers were still required to retain all pertinent test data reports for recordkeeping purposes. EPA is proposing to reinstitute the requirement for manufacturers to submit to the Agency test data reports following each required product test. The reports would have to include measurement information, test results and calculated lesser and greater NRRs obtained from the testing laboratory for each product or product category. Manufacturers would continue to retain such records for a period of two (2) testing periods. However, if a manufacturer elects to alter the product design or materials prior to expiration of the 5 year recurrent testing cycle, the manufacturer would be required to test and submit the product's new test data report to the EPA.

The annual reporting burden for this collection of information for the initial test data report for approximately 81 respondents is estimated to be 185 labor hours per year [555 total hours] at a total annual cost of \$5,735 [\$17,205 total cost]. This burden estimate includes time to complete the cover sheet per Annex A of the proposed regulation, time to convert the results into a PDF document, and time to submit the test data report(s) to the EPA. Burden is defined at 5 CFR 1320.3(b).

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-2003-0024. Submit any comments related to the ICR to the EPA docket noted above and to 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 August 5, 2009, a comment to OMB is best assured of

having its full effect if OMB receives it by September 4, 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 today's proposed rule on small entities, small entity is defined as: (1) A small business engaged in manufacturing, distributing, relabeling and/or importing of hearing protection devices having NAICS codes presented in Table A-2; (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 today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are manufacturers, distributors, repackagers and importers of hearing protector devices. We have determined that fewer than 100 U.S. small businesses are expected to be subject to the planned rule changes and using conservative assumptions only 1 or 2 of those potentially affected face significant adverse impacts.

In its analysis of the impacts of the rule, EPA made a significant effort was made to ensure that we identified as many as possible of the companies that manufacture or distribute HPDs, including any that are small businesses. A number of steps were taken to identify these companies, including reviews of the NIOSH Hearing Protection Device Compendium and the membership directory of the National Hearing Conservation Association (NHCA). Further, the NHCA was contacted to obtain a listing of small companies engaged in the manufacture or relabeling of HPDs. The NHCA assisted by providing information on

some companies which obtain HPD from manufacturers for sale under their own labels. We also reviewed a number of directories of HPD and safety equipment vendors, including the Noise Pollution Clearinghouse, the International Safety Equipment Association Buyer's Guide, the Thomas directory, the Business Internet, Hoover's Online, and Mergent Online.

It is possible that some manufacturers or distributors were not identified in these efforts. Because of the classification of HPD manufacturers in the Census, it is particularly difficult to identify all HPD manufacturers. As discussed in paragraph X (A), HPD manufacturers are generally in a miscellaneous manufacturing category (NAICS Code 339113) along with manufacturers of surgical appliances and supplies because many HPD manufacturers also produce other products. In addition, many of these companies classify themselves under other NAICS categories. Therefore, the Census does not provide an explicit count of HPD manufacturers. We believe that most of the small manufacturers and distributors of HPDs have been identified, but we invite reviewers to submit any additional relevant data in this regard.

For most categories applicable to HPD manufacturers, a small business is defined as any company which employs fewer than 500 employees (and which is not owned by another large business). The small business size threshold is 750 employees for firms which also produce electronic or communications equipment, as is the case with most manufacturers of active HPDs. For distributors that merely relabel HPDs, the small business size threshold is 100 employees.

Using the applicable NAICS size thresholds, 54 of the 96 identified HPD manufacturers and relabelers would be classified as small businesses. However, it must be noted that the NAICS thresholds overstate the number of truly small businesses. This is because most passive HPD manufacturers fall into a catch-all miscellaneous manufacturing category which was primarily designed to characterize the manufacturers of surgical equipment. Thus, the 500 employee threshold used for this category probably does not reflect the conditions of the HPD manufacturing industry. Nevertheless, we have analyzed the costs of compliance for all of the companies that would be classified as small under the applicable NAICS threshold. However, we have also paid special attention to a subset of "very small" companies, which produce only one or two HPD product lines. Of

the 96 identified HPD manufacturers and relabelers, 34 would fall into this “very small” business category.

After identifying the small businesses likely to be subject to the rule, we estimated the potential economic impacts of the proposed rule on small entities. For this proposed rule, we evaluated the compliance costs as a percentage of total sales for any small businesses affected by any proposed regulatory action. Costs of compliance were identified for each of these small and very small companies based on the numbers of HPD models they sell and using the calculation methods and assumptions outlined in paragraph X (C) above. Some of these companies were interviewed as part of the effort to develop background information to estimate the costs and economic impacts of labeling rule changes; these companies gave information on the number of HPD models sold.³⁷ We estimated the numbers of product

models sold by other small businesses from catalogs and other advertising materials published on the Internet.

Table F-1 summarizes the estimated impacts of the proposed labeling rule changes on U.S. small businesses, including the initial costs of compliance and the ongoing annualized costs for the 3-year and 5-year recurrent test options. Therefore, we have analyzed small business impacts for both ends of this range. In addition, we have analyzed impacts for the ranges of testing and labeling costs identified in Table F-1, and the ranges of labor requirements shown in Table C-4 for reporting and recordkeeping. The table gives ranges of costs, depending on which underlying unit cost estimates are used for testing, labeling, and recordkeeping.

We have estimated that the initial testing and labeling costs would average 1.1–2.1 percent of sales during the initial compliance period for all 54 U.S. small businesses affected by the rule.

For the 3-year recurrent test interval, we have estimated that the average annual compliance costs for all 54 U.S. small businesses affected by the rule would be 0.5–0.7 percent of annual sales. The estimates of ongoing annual costs include the amortized initial compliance costs. The majority of small businesses (44 to 47) are expected to incur ongoing annual costs of less than 1 percent of the total annual sales. However, between 7 and 10 small businesses are expected to incur annual ongoing compliance costs exceeding 1 percent of their total annual sales. (Of these small businesses, we estimate that one or two are very small businesses (produce less than 3 types of product)). It is possible that one or more small businesses may experience costs exceeding 3 percent of sales. However, our data set is limited for sources in this size range (generally facilities with very low annual sales volume).

TABLE F-1—SUMMARY OF IMPACTS ON SMALL BUSINESSES

Cost element	3-Year recurrent testing	5-Year recurrent testing
Total number of small businesses affected by the rule in the U.S	54	
Initial testing and labeling:		
Estimated initial costs of compliance:		
Lowest cost for a small business	<1,000	
Average cost for a small business	47,000–94,000	
Maximum cost for a small business	298,000–620,000	
Ongoing annual costs of compliance		
Estimated annual costs		
Lowest cost for a small business	500	500
Average cost for a small business	10,000–14,000	8,000–11,000
Maximum cost for a small business	63,000–90,000	49,000–68,000
Estimated annual cost as a fraction of annual sales: ^{a b}		
Lowest cost for a small business	<0.01%	<0.01%
Average cost for a small business	0.5–0.7%	0.4–0.6%
Maximum cost for a small business	11–17%	9–12%
Number of small businesses with estimated annual compliance costs greater than:		
1% of annual sales	7–10	4–8
3% of annual sales ^c	1	1

^aSales figures used in these calculations are from market databases, such as Dun and Bradstreet, and include not only HPD, but all products sold by the companies, such as other safety equipment.

^bAnnualized costs of compliance include amortized costs of initial testing and labeling.

^cOne or more companies may experience costs above 3% of sales, but our data set is limited in this size range.

At the 5-year recurrent test interval, the average annual compliance costs for all 54 U.S. small businesses affected by the rule is estimated to be 0.4–0.6 percent of annual sales. The majority of small businesses (46 to 50) are expected to incur ongoing annual costs of less than 1 percent of the total annual sales. However, between 4 and 8 small businesses are expected to incur ongoing annual compliance costs above 1 percent of their annual sales. This

means that 7 to 15 percent of the small businesses subject to the rule are expected to face economic impacts greater than 1 percent. (Of these small businesses, we estimate that one or two are very small businesses (produce less than 3 types of product)). It is possible that one or more small businesses may experience costs that exceed 3 percent of sales. Once again, we note that our data set is limited for sources in this

size range (generally facilities with very low annual sales volume).

Given that there are some impacts on small businesses, we looked for ways to mitigate these impacts. One step we have taken, as discussed earlier, is to exempt companies that sell exclusively over the Internet from the requirement to provide hard copy labels on their product packaging; an electronic label is being proposed as the exclusive labeling requirement for such entities. Additionally, after considering

³⁷The referenced interviews can be found in the Federal Docket at <http://www.regulations.gov>, docket number EPA-HQ-OAR-2003-0024.

regulatory options to require retesting every 3 years versus every 5 years, we have selected the 5-year option. This option will allow manufacturers to time-stream the testing of their product categories. Finally, we think that companies will take steps on their own to reduce compliance costs by reviewing their product slates and reducing the number of HPD models that are low sales products and/or older products that have updated versions. These actions would reduce their costs of compliance with the revised testing and labeling requirements. We continue to be interested in the potential impacts of this proposed rule on small entities and solicit comments on issues related to such impacts.

Small governments are not affected since enforcement of the proposed regulation would continue to be carried out by the federal EPA. Further, not-for-profit enterprises engaged in the distribution of hearing protectors do not assume responsibility or incur the costs of testing and labeling of a product and therefore, are not impacted by the rule.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities through the means described above. When developing the proposed rule, we took special steps to ensure that the burdens imposed on small entities were minimal. We continue to be interested in the potential impacts of this proposed rule on small entities and solicit comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a

written statement is needed, section 205 of the UMRA generally requires the Agency 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 we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, a small government plan must be developed under section 203 of the UMRA. 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.

We have determined that this proposed action 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 to the private sector in any one year. Thus, this proposed action is not subject to the requirements of sections 202 and 205 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. This proposed

rule applies to manufacturers and distributors of hearing protection devices and has no association with State and local governments. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Executive Order (EO) 13175, 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 action will have no substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes as specified in EO 13175. Thus, Executive Order 13175 does not apply to this proposed action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks to children, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS

bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. Therefore, EPA conducted a search to identify potentially applicable VCS. We identified several that have direct or partial applicability to the technical requirements specified in the rule. To the extent possible the Agency has *incorporated by reference* the principal elements of the American National Standards Institute (ANSI) standard S12.6 (2008). In addition, we have also incorporated by reference various elements of ANSI S12.68 (2007) and S12.42. The Agency also gave careful consideration to all relevant standards of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC) and determined that the above mentioned ANSI standards and the IEC standard 60711 were the most appropriate for this action.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

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 hearing protectors provide protection to the human health of 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.

List of Subjects in 40 CFR Part 211

Environmental Protection, Incorporation by reference, Noise

Abatement Programs, Product Noise Labeling, Hearing Protection Devices.

Dated: July 21, 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 211—PRODUCT NOISE LABELING

1. The authority citation for part 211 continues to read as follows:

Authority: Sec. 8, Noise Control Act of 1972, (42 U.S.C. 4907), and other authority as specified.

Subpart B—[Amended]

2. Section 211.201 is revised to read as follows:

§ 211.201 Applicability.

(a) Unless this part states otherwise, the provisions of subpart B, part 211, apply to all devices or materials sold as “hearing protection devices” on the basis of their ability to reduce the level of sound entering the user’s ears and thus claim to protect the users hearing. The proposed regulation also applies to devices of which hearing protection may not be their primary function, but which are nonetheless sold in-part as providing protection to the user’s hearing.

(b) To the extent that a product manufacturer, importer, packager or any other party introduces into U.S. commerce any product that incorporates an explicit or implicit claim that said product can protect the hearing of the user, or stipulates the level of sound reduction offered by such product, then it shall be subject to the requirements of this proposed regulation (*See* 211.203(u) for definition of “hearing protection device.”)

(c) This rule does not apply to those devices or materials that are designed to fit over or into the user’s ears to, for example, preclude the entrance of water during swimming, reduce the level of annoyance from snoring or to enhance listening to music or video dialogue presentations.

(d) This regulation is also applicable to those devices or materials that while not designed for or intended to be used as hearing protection devices can, due to their similarity in appearance or function, be easily mistaken for products that are hearing protection devices. To the extent that a product manufacturer, importer, packager or any other party introduces into U.S. commerce any product that incorporates

an explicit or implicit claim that said product can protect the hearing of the user, or stipulates the level of sound reduction offered by such product, then such product shall be subject to the requirements of this proposed regulation.

(e) The provisions of subpart A apply to all products for which regulations are published under part 211 and manufactured after [EFFECTIVE DATE OF FINAL RULE], unless they are made inapplicable by product-specific regulations.

3. Section 211.202 is revised to read as follows:

§ 211.202 Effective Date.

Manufacturers of hearing protection devices must comply with the requirements set forth in this subpart for hearing protective devices manufactured on or after [date TBD]. All hearing protection devices that are manufactured on or after the effective date of this subpart must be tested and labeled in accordance with the applicable procedures set forth herein.

4. Section 211.203 is revised to read as follows:

§ 211.203 Definitions.

As used in subpart B, all terms not defined here have the meaning given them in the Noise Control Act of 1972 (the Act) (42 U.S.C. 4907), or in subpart A of this part.

(a) *A-Duration.* The duration of an impulsive sound from its initial sharp increase in positive sound pressure to the point where the sound pressure becomes negative.

(b) *A-Weighted Sound Level.* A single number representing the overall sound level of a noise that emphasizes sounds containing frequencies between about 500 and 5000 Hz and deemphasizes frequencies outside that range. The resultant sound level is referred to as A-weighted units in dB, generally indicated as dBA and considered to be representative of the human ears frequency response to sounds.

(c) *Acoustic Test Fixture (ATF).* A device that approximates the size and shape of a human head and which includes acoustic elements to simulate the acoustic response of the ear canal. An ATF with ear canals approximates the cross sectional area and length of the human ear canal.

(d) *Active Noise Reduction.* The reduction of sound transmission based on the use of electronic elements (e.g. circuits and transducers) to produce acoustic signals of approximately equal and opposite phase and amplitude to reduce the transmitted sound.

(e) *ANSI/ASA S12.6-2008*. “American National Standard—Methods for Measuring the Real-Ear Attenuation of Hearing Protectors.” A procedure for measuring the hearing protector sound attenuation values at various frequencies using one-third octave band noise stimuli presented to subjects in a diffuse sound field.

(f) *ANSI S12.42-1995 (R2002)*. “American National Standard—Microphone-in-Real-Ear and Acoustic Test Fixture Methods for the Measurement of Insertion Loss of Circumaural Hearing Protection Devices.” A procedure for measuring the acoustical insertion loss of earmuff using a miniature microphone positioned in the ear canal.

(g) *ANSI/ASA S12.68-2007*. “American National Standard—Methods of Estimating Effective A-weighted Sound Pressure Levels When Hearing Protectors are Worn.” Procedures for calculating Noise Reduction Ratings.

(h) *Assumed Protection Value (APV_{PK})*. The protection in a given octave band computed as the mean attenuation, minus the standard deviation of that octave band multiplied by a constant.

(i) *Attenuation*. The reduction of sound pressure level provided by a hearing protection device by either structural elements, acoustic pathways, electronic or mechanical means.

(j) *Carrying Case*. The container used to store reusable hearing protectors.

(k) *Category*. A group of hearing protectors which are identical in all aspects to the parameters listed in § 211.210-2(a)(3).

(l) *Claim*. An assertion made by a manufacturer regarding the intended purpose, general performance and the sound attenuating effectiveness of his product.

(m) *Decibel (dB)*. Unit of measure of sound level used in this regulation for both sound pressure level and hearing threshold level.

(n) *Dispenser*. The permanent or disposable container designed to hold more than one complete set of hearing protector(s) for the express purpose of display to promote sale or display to promote use or both.

(o) *Disposable Device*. A hearing protection device that is intended to be discarded after one or otherwise specified period of use.

(p) *Effective A-weighted Sound Pressure Level (L'_A)*. The sound pressure level, A-weighted and referred to an equivalent diffuse sound field condition, that is estimated to be experienced by users when the hearing protector is worn.

(q) *Effective Peak Sound Pressure Level (L'P)*. The estimated peak sound pressure level underneath the hearing protection device.

(r) *Estimated Noise Level Reduction (ENR)*. The value in decibels derived from the variability of noise reduction as a function of noise spectra.

(s) *Fitting Instruction*. Guidance on the demonstration and fitting of a hearing protection device that is provided to the testing laboratory and included with the product as entered into commerce.

(t) *Headband*. A component of a hearing protection device that applies force to, and holds in place on a person's head, the sound attenuating component that is intended to acoustically seal the ear canal. The headband can be positioned over-the-head, behind-the-head or under-the-chin of the user.

(u) *Hearing Protection Device (HPD)*. Devices or materials intended to reduce the level of sound entering a user's ears. Such devices include those of which hearing protection may not be the primary function, but which are nonetheless sold partially as providing hearing protection to the user. This term is used interchangeably with the terms, “hearing protective device”, “hearing protector”, “device” and “HPD” in subpart B. The following list, although not all inclusive, presently represents products that are subject to this part.

(1) *Passive Hearing Protection Device*. A device that relies solely on its structural elements to block or otherwise control the transmission of sound into the ear canal and that does not use electronic circuits or fluid dynamic means to reduce the entry of external sound.

(2) *Active Hearing Protection Device*. A device that contains electronic components including transducers (i.e. speakers and microphones) to increase or decrease the transmission of sound into the ear canal. Also referred to as an electronic hearing protection device.

(3) *Ear plug*. A hearing protection device that is designed to be inserted into the ear canal and held in place principally by virtue of its fit inside the ear canal.

(4) *Ear cap*. See “Semi-insert Device”.

(5) *Ear cup*. The combination of the hard shell, soft cushion and sound attenuating material that encloses the external ear or pinna in ear muff applications.

(6) *Ear muff*. A hearing protection device usually comprised of a headband which applies spring-like force/pressure to two ear cups with soft cushions to seal against the external ear or pinna (supra-aural) or the sides of the head

around the pinna (circumaural). The ear cups may also be held in position by attachment arms mounted on a hardhat or hardcap.

(7) *Active Noise Reduction Hearing Protection Device*. A device that uses single or in combination, electrical components and structural elements to reduce the sound transmitted to the ear canal through acoustic cancellation of the air-conducted and/or bone-conducted external sound.

(8) *Amplitude-Sensitive Hearing Protection Device*. A device that is designed to produce a change in sound attenuation as a function of the external sound level. Amplitude-sensitive hearing protection devices include passive devices, active devices, and impulsive noise devices.

(9) *Communication Headset*. A voice communication device (ear plug, ear muff, semi-insert device or helmet) that is also designed to reduce the level of sound at the users' ears by either structural elements and/or electronic means.

(10) *Custom-molded Hearing Protection Device*. A device that is made to conform to a specific person's ears (pinnas) and ear canals.

(11) *Electronic Hearing Protection Device*. See “Active Hearing Protection Device.”

(12) *Helmet*. A hearing protection device that provides impact protection to the head or skull and designed with ear cups to reduce the external sound from entering the ears through either structural elements and/or electronic means.

(13) *Level-Dependent Hearing Protection Device*. See Amplitude-Sensitive Hearing Protection Device.

(14) *Semi-insert Device*. An ear plug-like hearing protection device consisting of soft pods or tips that are held in place by a lightweight band. The pods are positioned in the conchae covering the entrances to the ear canals, or fitted to varying depths within the ear canals. Semi-inserts that cap the ear canal require the force of the band to retain their position and acoustic seal. Semi-inserts that enter the ear canal behave more like ear plugs; they seal the ear to block noise with or without the application of band force. Also referred to as canal cap or banded hearing protector.

(v) *Impulsive Acoustic Test Fixture (IATF)*. A device that approximates the size and shape of a human head, simulates the acoustic response of the human ear canal, and includes a microphone(s) and electronic circuitry to detect acoustic signals.

(w) *Impulsive Noise*. A sound or series of sounds that are characterized

by a sharp rise and rapid decay in sound pressure level and have duration of less than one second.

(x) *Impulsive Noise Reduction*. The reduction of peak impulse sound transmission based upon the single or combined use of passive and/or active noise reduction elements.

(y) *Insertion Loss*. The arithmetic difference in decibels between the sound pressure levels measured at a reference point (i.e. the ear canal or microphone of the acoustic test fixture) with and without a hearing protection device in place.

(z) *Label*. A notice, as described in this subpart, which is inscribed on, affixed to or appended to a product, its packaging, or both for the purpose of giving the purchaser or product user information regarding the products designed use, noise reduction effectiveness, operating or fitting instructions and other information appropriate to the product.

(aa) *Manufacturer*. Any person engaged in the manufacturing or assembling of products, or the importing of products for resale, or who purchases products from an original equipment manufacturer (OEM) for the purpose of repackaging or relabeling or who acts for, and is controlled by any such person in connection with the distribution of such products in U.S. commerce.

(bb) *Microphone in Real Ear (MIRE)*. A testing method where miniature microphones are positioned at the entrance to the subject's blocked ear canals to measure the sound pressure level underneath a hearing protection device.

(cc) *Noise*. Undesired or unwanted sound. For the purpose of this subpart, noise and sound are used interchangeably.

(dd) *Noise Reduction Rating (NRR)*. A single number metric used to describe noise reduction in decibels.

(ee) *Noise Reduction Variability Data Points*. The values of the noise reductions calculated for the spectral balances given by $L_C - L_A = (-1, 2, 6 \text{ and } 13 \text{ dB})$.

(ff) *Occluded Threshold of Hearing*. The minimum level of sound heard at a specific frequency when a hearing protection device is worn.

(gg) *Octave Band Attenuation*. The amount of sound reduction determined according to the measurement procedure of § 211.206 for one-third octave bands of noise.

(hh) *Open Threshold of Hearing*. The minimum level of sound heard at a specific frequency when a hearing protection device is not worn. Also

referred to as "unoccluded" threshold of hearing.

(ii) *Package*. The container in which a hearing protection device is presented for purchase or use. The package in some cases may be the same as the carrying case.

(jj) *Passive Noise Reduction*. The reduction of sound transmission based solely on the use of materials and/or structural elements.

(kk) *Pink Noise*. Noise for which the spectrum density varies as the inverse of frequency.

(ll) *Primary Panel*. The surface of the product package that is considered to be the front surface or that surface on the package which is intended for initial viewing at the point of ultimate sale or the point of distribution for use.

(mm) *Random Incident Field*. A sound field in which sound waves are incident from all directions with equal probability.

(nn) *Real-Ear Attenuation at Threshold (REAT)*. The mean value in decibels of the occluded threshold of hearing minus the open threshold of hearing for all trials of each test subject under otherwise identical test conditions.

(oo) *Real-Ear Attenuation at Threshold (REAT)*. The mean value in decibels of the occluded threshold of hearing minus the open threshold of hearing for all trials of each test subject under otherwise identical test conditions.

(pp) *Residual Volume*. The volume of air between the termination of an ear plug and the sensing surface of the microphone when an ear plug is inserted into an acoustic test fixture.

(qq) *Reverberation Time*. The time, in seconds, required for a sound produced in an enclosure to decay to a designated level once the sound source is turned off.

(rr) *Spectral Balance (B)*. The difference in decibels between the C-weighted and A-weighted levels of a sound spectrum ($L_C - L_A$), indicating the proportion of energy at low frequencies in the spectrum.

(ss) *Sound pressure level (dB SPL)*. Ten times the logarithm to the base 10 of the ratio of the time mean square sound pressure to the square of the reference sound pressure, given by: $L_p = 10 \log_{10} (p^2/p_0^2)$, where p is the root mean square value of sound pressure in pascals, and the reference sound pressure p_0 is 20 micropascal (20×10^{-6} Newtons per meter squared) for measurements in air. Unit: decibel (dB).

(tt) *Spectral uncertainty*. Variation in the attenuation provided by a hearing protector due to the frequency content of the noise in which a device is worn.

(uu) *Subject uncertainty*. Variation in the attenuation provided by a hearing protector due to the effect of different subjects fitting the device when the attenuation is assessed.

(vv) *Tag*. Stiff paper, metal or other hard material that is tied or otherwise affixed to the packaging of a protector.

(ww) *Test Facility*. A laboratory that tests hearing protection devices in accordance with the requirements of this subpart.

(xx) *Test Hearing Protector*. A hearing protector that has been selected for testing to determine the NRR value(s) to be put on the label, or which has been designated for testing to verify the labeled value(s) and determine compliance of the protector with this subpart.

(yy) *Test Request*. A request submitted to the manufacturer by the Administrator of the Environmental Protection Agency (EPA) that will specify the hearing protector category, and test sample size to be tested according to § 211.212, and other information regarding the audit.

(zz) *Test Subject*. Any person of any gender, ethnicity or age who is selected from a group of candidates that exhibit physical and mental characteristics requisite to the conduct of testing in accordance with § 211.206-1(b)(5) and other requirements of this subpart.

(aaa) *Third-octave band microphone free-field rejection*. The variation in sound field (decibels) of the microphone polar response (front to back for cardioid and front to side for cosine) for each measured third-octave band.

(bbb) *Threshold of Hearing*. For a specified signal, the average minimum sound pressure level as indicated by the test subject's responses.

(ccc) *Trial*. A complete series of occluded and unoccluded hearing threshold measurements on a single test subject for a single hearing protector.

(ddd) *White Noise*. Noise for which the spectrum density is independent of frequency over a specified frequency range.

5. Section 211.204-1 is revised to read as follows:

§ 211.204-1 Information content of primary label.

The information to appear on the primary label must be according to § 211.104 of Subpart A except as stated here and prescribed in Figures 1, 2 and 3 of § 211.204-1.

(a) Primary Label for all PASSIVE Hearing Protection Devices (Figure 1):

(1) Area A must state "Noise Reduction Rating".

(2) Area B must contain the range(s) of the Noise Reduction Ratings (NRR) in

decibels for the designed mode(s) of use of that model hearing protector.

(i) The range shall be depicted by a bar-graph that shall include a numeric scale from 0 to 50 decibels in equal increments of 10 decibels.

(ii) A solid color bar, as presented in Figure 1 of this section, shall be superimposed on the bar-graph scale indicating the lesser and greater Noise Reduction Ratings from the 80th and 20th percentiles.

(iii) The lesser and greater NRR values shown on the numeric scale shall be

determined in accordance with § 211.207–2.

(iv) For devices with headbands that may be used in different positions, the labeled NRR shall represent the 80th and 20th percentiles for the manufacturers recommended position as determined in § 211.207–2.

(v) The word “PASSIVE” shall be placed and centered below the bar-graph. For multi-positional head band protectors, the tested position shall be indicated by the words, “OVER HEAD”, “BEHIND HEAD” or “UNDER CHIN”

placed immediately following “PASSIVE”.

(3) Area C must state “PASSIVE NRR values indicate range of noise reduction when used as instructed by the manufacturer. When used in steady and intermittent noise environments, the difference between the noise level and respective NRRs is the user’s estimated exposure level. This protector was not tested for impulse noise.”

(4) Area D of the primary label must state the manufacturers’ name, city and state of principal office and may include a primary web address.

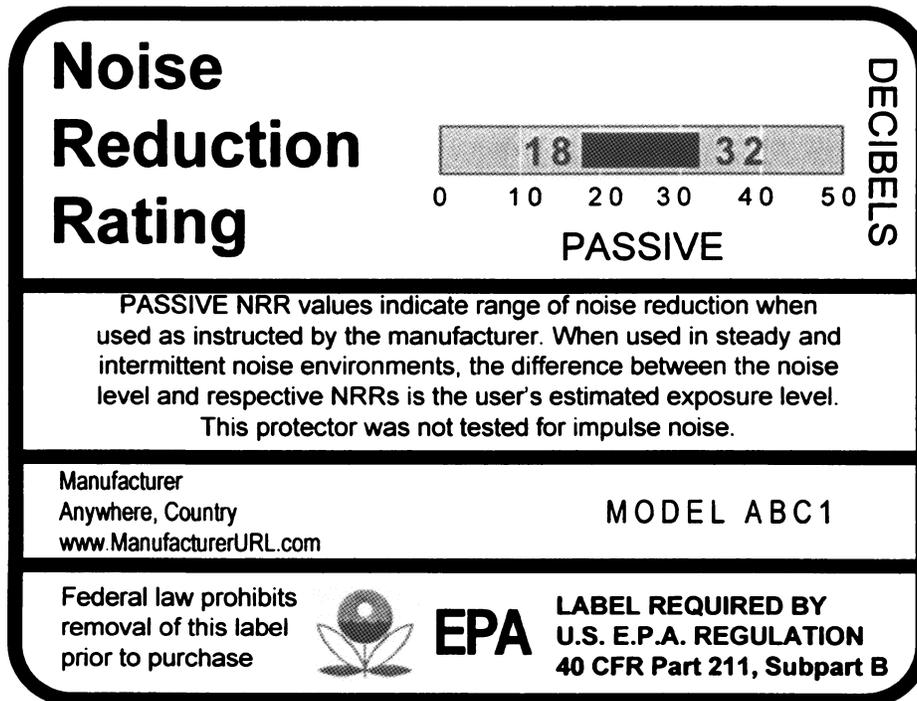


Figure 1. Primary Label for All PASSIVE Hearing Protection Devices

(b) Primary Label for ACTIVE Noise Reduction Hearing Protection Devices (Figure 2):

(1) Area A must state “Noise Reduction Rating”.

(2) Area B must contain the range(s) of the Noise Reduction Ratings (NRR) in decibels for the designed mode(s) of use of that model hearing protector.

(i) There shall be two bar-graphs with numeric scales from 0 to 50 decibels in equal increments of 10 decibels. The two bar-graphs shall be aligned one above the other as shown in Figure 2 of this section.

(ii) The word “ACTIVE” shall be placed and centered above the upper bar-graph.

(iii) The word “PASSIVE” shall be placed and centered below the lower bar-graph.

(iv) A solid color bar shall be superimposed on the respective bar-graphs indicating their lesser and greater Noise Reduction Ratings from the 80th and 20th percentiles.

(v) The lesser and greater NRR values shown on the upper bar-graph shall be determined in accordance with § 211.207–3.

(vi) The lesser and greater NRR values shown on the lower numeric scale shall be determined in accordance with § 211.207–3.

(vii) For devices with headbands that may be used in different positions, the labeled NRR shall represent the 80th and 20th percentiles for the manufacturers recommended position(s) as determined in § 211.207–3. The tested position shall be indicated by the

words, “OVER HEAD”, “BEHIND HEAD” or “UNDER CHIN” placed immediately following “PASSIVE” and “ACTIVE”.

(2) Area C must state “ACTIVE and PASSIVE NRR values indicate range of noise reduction with and without electronic activation when used as instructed by the manufacturer. In steady and intermittent noise environments, the difference between the noise level and respective NRRs is the user’s estimated exposure level. This protector was not tested for impulse noise.”

(3) Area D of the primary label must state the manufacturers’ name, city and state of principal office and may include a primary web address.

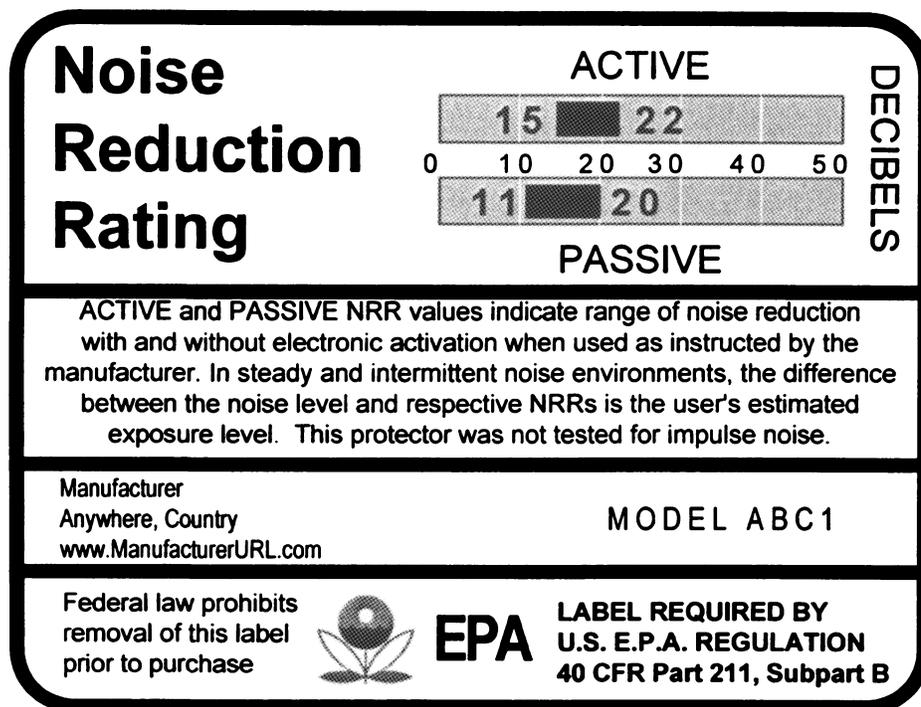


Figure 2. Primary Label for ACTIVE Noise Reduction Hearing Protection Devices

(c) Primary Label for IMPULSIVE Noise Hearing Protection Devices (Figure 3):

(1) Area A must state "Noise Reduction Rating".

(2) Area B must contain the range(s) of the Noise Reduction Ratings (NRR) in decibels for the designed mode(s) of use of that model hearing protector.

(i) There shall be two bar-graphs with numeric scales from 0 to 50 decibels in equal increments of 10 decibels. The two bar-graphs shall be aligned one above the other as shown in Figure 3 of this section.

(ii) The word "IMPULSIVE" shall be placed and centered above the upper bar-graph.

(iii) The word "PASSIVE" shall be placed and centered below the lower bar-graph.

(iv) A solid color bar shall be superimposed on the respective scales indicating their lesser and greater Noise Reduction Ratings from the 80th and 20th percentiles.

(v) The *lesser* impulsive NRR values shown on the upper numeric scale shall be determined in accordance with § 211.207-4(f).

(vi) The *greater* impulsive NRR values shown on the upper numeric scale shall be determined in accordance with § 211.207-4(g).

(vii) The *lesser* and *greater* passive NRR values shown on the lower numeric scale shall be determined in accordance with § 211.207-2.

(viii) For devices with headbands that may be used in different positions, the labeled NRR shall represent the 80th

and 20th percentiles for the manufacturers recommended position as determined in § 211.207-2. The tested position shall be indicated by the words, "OVER HEAD", "BEHIND HEAD" or "UNDER CHIN" placed immediately following "IMPULSIVE" and "PASSIVE."

(3) Area C must state "IMPULSIVE and PASSIVE NRR values indicate the range of noise reduction in impulsive and continuous noise environments when used as instructed by the manufacturer. The difference between the noise level and respective NRRs is the user's estimated exposure level."

(4) Area D of the primary label must state the manufacturers' name, city and state of principal office and may include a primary web address.

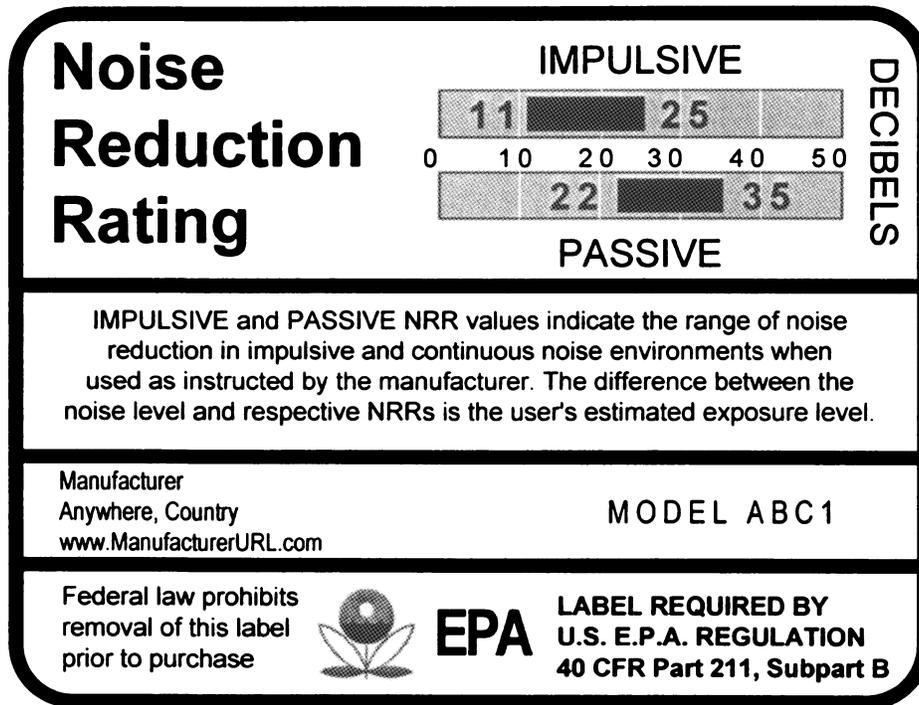


Figure 3. Primary Label for IMPULSIVE Noise Hearing Protection Devices

6. Section 211.204-2 is amended as follows:
 a. Revise paragraphs (b)(2) and (b)(3).
 b. Revise (c) and (d).
 c. Add new paragraphs (e) through (l).
 § 211.204-2 Primary label size, print and color.

* * * * *

(b) * * *

(2) Area B—2.1 mm or 6 point for numerals and

(3) Area A and B—1.7 mm or 5 point for words.

* * * * *

(c) The use of upper and lower case letters and the general appearance of the label must be similar to the example in Figure 1 of § 211.204-1.

(d) The color of the EPA logo shall be a solid color with sufficient contrast with surrounding information or if it is printed in full color, it must be the colors of the official EPA logo.

(e) The minimum dimensions of the scale shall be 2.2 (cm) (0.87 inch) long and 0.3 (cm) (0.12 inch) high.

(f) The minimum font size of the labels for the bar shall be 4 point type.

(g) The values depicted on the bar shall be at least 6 point in bold type face.

(h) The solid range bar shall be a minimum of 0.2 (cm) (0.079 inch) high, vertically centered in the bar-graph scale and of sharply contrasted solid-color with the endpoints positioned at the respective numeric limits.

(i) For all PASSIVE hearing protection devices the layout shall be according to Figure 1 of § 211.204-1.

(j) For ACTIVE hearing protection devices the layout shall be according to Figure 2 of § 211.204-1.

(k) For IMPULSIVE hearing protection devices the layout shall be according to Figure 3 of § 211.204-1.

7. Section 211.204-3 is amended by revising paragraphs (a) introductory text and (a)(2) and by adding paragraph (a)(3) to read as follows:

§ 211.204-3 Label location and type.

(a) The manufacturer or entity that introduces the product into commerce is responsible for labeling the product for ultimate sale or use. Such manufacturer or entity shall select the primary product label in accordance with § 211.204-1 and locate it as follows:

* * * * *

(2) Affixed to the primary panel of the product packaging if the label complying with § 211.204-1 is not visible at the point of ultimate purchase or the point of distribution to users.

(3) Products that are sold exclusively over the Internet and thus constitute the point of sale to ultimate purchasers or users, shall present the requisite primary and secondary labels as readily visible electronic images for each product category offered for sale. Such electronic labels shall contain all information that is required for labels

that are required to be affixed to and contained within the package of products with a point of sale outside the Internet. Such labels must be automatically downloaded to the purchaser along with confirmation of acceptance of payment from the purchaser. Electronic labels shall not be used for bulk container sales or for non-Internet resale.

* * * * *

8. Section 211.204-4 is revised to read as follows:

§ 211.204-4 Supporting information.

The following minimum supporting information must accompany all hearing protection devices in a manner that ensures its availability to the perspective user in an easily readable format. In the case of bulk packaging and dispensing, such supporting information must be affixed to the bulk container or dispenser in the same manner as the label, and in a readily visible location. Such information shall be presented in tabular form except where specified otherwise.

(a) The mean sound attenuation for each octave band test frequency as determined from the measurements prescribed in § 211.206-1.

(b) The standard deviation of the mean sound attenuation across subjects for each octave band test frequency as determined from the measurements prescribed in § 211.206-1.

(c) The Assumed Protection Values (APV) for the 80th and 20th percentiles of the sound attenuation for each octave band test frequency as determined from

the measurements prescribed in § 211.206–1.

(d) The noise reduction as a function of spectral balance shall be presented as

shown in the example given in Table 1 of this section.

TABLE 1—EXAMPLE—NOISE REDUCTION VARIABILITY DATA POINTS
[spectral balance]

	– 1 dB	– 2 dB	6 dB	13 dB
	Noise Reductions (dB)			
20th Percentile	30.6	24.0	18.7	11.9
80th Percentile	26.8	19.2	13.7	8.1

(e) The variability of attenuation as a function of noise spectrum shall be presented in a graphical format as shown in Figure 1 of this section.

(1) The figure caption shall be “Variability of Noise Reduction as a function of Noise Spectra.”

(2) The dimensions of the body of the graph shall be no smaller than 5.0 cm wide by 3.8 cm high (1.97 x 1.5 inches).

(3) The dimensions of the body of the graph shall be no smaller than 5.0 cm wide by 3.8 cm high (1.97 x 1.5 inches).

(4) The ordinate scale shall be linear from – 2 to 16 decibels with increments of 2 decibels. The axis label shall be “Spectral Balance B = LC – LA (dB)”.

(5) The abscissa scale shall be linear from 0 to 50 decibels with increments of 5 decibels. The abscissa scale shall be labeled “Estimated Noise Reduction (dB)”.

(6) The use of a grid is optional to facilitate interpolation of values.

(7) The symbols for the 80th percentile shall be filled and connected by solid lines.

(8) The symbols for the 20th percentile shall be unfilled and connected by solid lines.

(9) A legend shall be placed in the body of the graph as shown in the example of Figure 1 of this section.

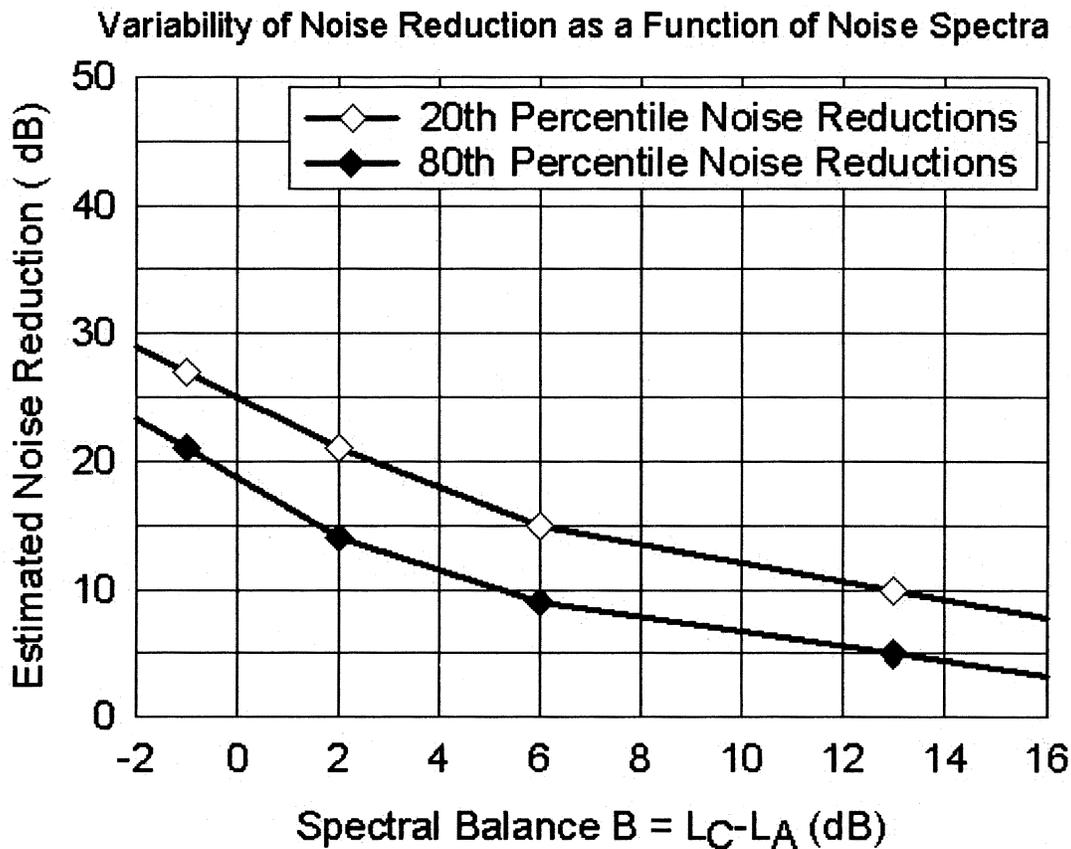


Figure 1. Example – Variability of Noise Reduction as a function of Noise Spectra

(f) For hearing protection devices with a headband that can be worn in multiple

positions (over head, behind head and/or under chin) the mean sound

attenuation values, standard deviations and APV, as prescribed in paragraphs

(a), (b), (c), (d) and (e) of this section, shall be provided for each tested position.

(g) The following statement, “When this device is worn as directed, the level of noise entering a person’s ear is approximated by the differences between the A-weighted environmental noise level and the lesser and greater NRRs.” except as stated in § 211.204–5 for ACTIVE devices and as stated in § 211.204–6 for IMPULSIVE devices.

(h) The following example shall be included except as stated in § 211.204–5 for ACTIVE devices and in § 211.204–6 for IMPULSIVE devices:

“Example:

(1) X: the sound pressure level as measured at the user’s location in decibels A-weighted (dBA).

(2) Lesser and greater NRRs: the PASSIVE NRR ratings obtained from the primary label or from the graph of noise reduction variability with spectral balance.

(3) The approximate range of sound pressure levels at the user’s ears with hearing protection:

(X — lesser NRR) = the greater sound pressure level.

(X — greater NRR) = the lesser sound pressure level.

The sound pressure level at the user’s ears will depend upon the fit of the protector.”

(i) The following cautionary note shall be included except as stated in § 211.204–5 for ACTIVE devices and as stated in § 211.204–6 for IMPULSIVE devices.

“Caution: For predominantly low frequency noise environments in which the difference in the measured C-weighted and A-weighted noise levels (dBC—dBA) exceeds 3 dB, the user is directed to the enclosed graph of the variability of noise reduction with noise spectra to determine the level of protection.”

(j) The month and year of production of the device shall be printed on the outside of the package using a minimum font size of 8 point.

(k) Instructions as to the proper use, fitting technique and care of the device.

(l) The following statement: “Improper fit or improper use of this device will decrease noise reduction effectiveness and increase the risk of hearing damage.

9. Section 211.204–5 is added to read as follows:

§ 211.204–5 Supporting information for Active Noise Reduction Hearing Protection Devices.

In addition to the supporting information required in § 211.204–4, the following minimum supporting information must accompany all ACTIVE devices in an easily readable format.

(a) The mean total sound attenuation for each octave band test frequency as determined from the measurements prescribed in § 211.206–2.

(b) The standard deviation of the mean total sound attenuation across subjects for each octave band test frequency as determined from the measurements prescribed in § 211.206–2.

(c) The Assumed Protection Values (APV) for the 80th and 20th percentiles of the sound attenuation for each octave band test frequency as determined from the measurements prescribed in § 211.206–2.

(d) The passive, active and total noise reduction data points as a function of spectral balance shall be presented as shown in the example in Table 1 of this section.

TABLE 1—EXAMPLE—COMBINED ACTIVE AND PASSIVE NOISE REDUCTION VARIABILITY AS A FUNCTION OF SPECTRAL BALANCE

	– 1 dB	2 dB	6 dB	13 dB
	Noise Reductions (dB)			
20th Percentile Passive	21.0	14.0	9.0	5.0
80th Percentile Passive	27.0	21.0	15.0	10.0
20th Percentile Active	– 1.0	0.7	6.2	12.5
80th Percentile Active	0.0	0.0	7.5	14.0
20th Percentile Total	20.0	14.7	15.2	17.5
80th Percentile Total	27.0	21.0	22.5	24.0

(e) The variability of attenuation as a function of noise spectrum shall be presented in a graphical format as shown in Figure 1 of this section.

(1) The figure caption shall be “Variability of Noise Reduction as a Function of Noise Spectra.” The dimensions of the body of the graph shall be no smaller than 5.0 cm wide by 3.8 cm high (1.97 x 1.5 inches).

(2) The font size for the title, ordinate and abscissa scales, and the legends shall be no smaller than 4 point.

(3) The ordinate scale shall be linear from – 2 to +16 decibels with

increments of 2 decibels. The axis label shall be “Spectral Balance B = LC—LA (dB)”.

(4) The abscissa scale shall be linear from 0 to 50 decibels with increments of 5 decibels. The abscissa scale shall be labeled “Estimated Noise Reduction (dB)”.

(5) The use of a grid is optional to facilitate interpolation of values.

(6) The symbols for the 80th percentile passive noise reductions shall be filled and connected by solid lines.

(7) The symbols for the 20th percentile passive noise reductions shall

be unfilled and connected by solid lines.

(8) The symbols for the 80th percentile total noise reductions shall be filled, distinctly different from the passive symbols and connected by dashed lines.

(9) The symbols for the 20th percentile total noise reductions shall be unfilled, distinctly different from the passive symbols and connected by dashed lines.

(10) A legend shall be placed in the body as shown in the example given in Figure 1 of this section.

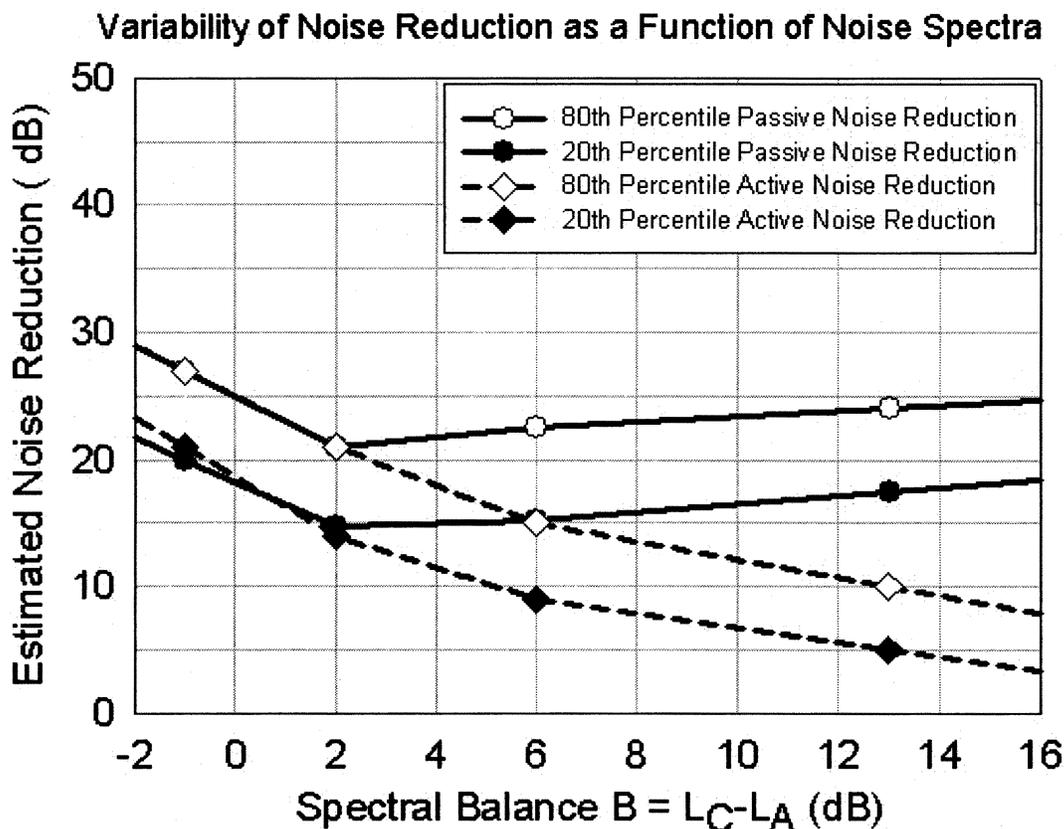


Figure 1 Example – Variability of Noise Reduction as a Function of Noise Spectra

(f) The following statement, “When this device is worn as instructed and operated in its PASSIVE mode, the level of noise entering a person’s ear is approximated by the differences between the A-weighted sound pressure level at the user’s location and the lesser and greater PASSIVE NRRs. When this device is operated in its ACTIVE mode, the level of noise entering the person’s ear is approximated by the difference between the A-weighted sound pressure level at the user’s location and the lesser and greater ACTIVE NRRs.”

(g) The following example shall be included for ACTIVE devices:
“Example:

(1) X: The sound pressure level as measured at the user’s location in decibels A-weighted (dBA).

(2) Lesser and greater NRR: The ACTIVE or PASSIVE ratings obtained either from the primary label or from the graph of noise reduction variability with spectral balance.

(3)(I) The approximate range of sound pressure levels at the user’s ears with the HPD in either its ACTIVE or PASSIVE mode:

(A) (X – lesser NRR) = the greater sound pressure level.

(B) (X – greater NRR) = the lesser sound pressure level.

(ii) The sound pressure level at the user’s ears will depend upon the fit and operating mode of the protector.”

(h) The following cautionary note shall be included in the secondary label for active noise reduction hearing protectors: “Caution: For the ACTIVE mode in predominantly low frequency environments in which the difference in the measured C-weighted and A-weighted sound pressure levels (dBC-dBA) exceeds 3 dB, the user is directed to the enclosed graph of the variability of noise reduction with noise spectra to determine the level of protection.”

(i) The following statement shall be included: “This device, in ACTIVE mode, is recommended for use in environmental noise levels from X to Y dBA.” The manufacturer shall designate the values of X and Y.

(j) If the total combined attenuation of REAT and L_{ACTIVE}, as calculated in § 211.206–2, for any octave band exceeds 50 dB, the following cautionary statement shall be included: “The

combined attenuation of this device has been measured to be in excess of 50 dB at XXX Hz. Sound energy transmitted through the head or oral/nasal cavities to the inner ear may be greater than the level of sound when attenuated by the hearing protection device.” The manufacturer shall designate the frequency band(s) where the attenuation exceeds 50 dB.

(k) The battery type, number of batteries and expected use time for the product.

10. Section 211.204–6 is added to read as follows:

§ 211.204–6 Supporting information for Amplitude-Sensitive Hearing Protection Devices.

In addition to the supporting information required in § 211.204–4, the following minimum supporting information must accompany all Amplitude-Sensitive hearing protection devices in an easily readable format. In the case of bulk packaging and dispensing, such supporting information must be affixed to the bulk container or dispenser in the same manner as the label, and in a readily visible location. The information

resulting from the measurements prescribed in § 211.206-3 shall be presented in tabular and graphical form as shown in Table 1 and Figure 1 of this section for PASSIVE Amplitude-Sensitive hearing protection devices and

as shown in Table 2 and Figure 2 of this section for ACTIVE Amplitude-Sensitive devices.

(a) The mean peak sound pressure levels.

(b) The mean impulsive noise reduction at each mean peak sound pressure level.

(c) The minimum and maximum impulsive noise reduction values at each mean peak sound pressure level.

TABLE 1—EXAMPLE—VARIABILITY OF IMPULSIVE NOISE REDUCTION FOR ABC PROTECTOR
[Passive mode]

Mean peak sound pressure level	131 dB	150 dB	167 dB
Mean Impulse Noise Reduction	23.2	22.9	23.4
Maximum Impulse Noise Reduction	24.0	23.1	24.4
Minimum Impulse Noise Reduction	21.5	22.4	22.7

TABLE 2—EXAMPLE—VARIABILITY OF IMPULSIVE NOISE REDUCTION FOR XYZ PROTECTOR
[Active and passive modes]

Mean peak sound pressure level	133 dB	150 dB	167 dB
Mean Impulse Noise Reduction (Passive)	32.2	32.8	33.9
Maximum Impulse Noise Reduction (Passive)	32.6	33.4	34.2
Minimum Impulse Noise Reduction (Passive)	31.2	31.7	33.7
Mean Impulse Noise Reduction (Active)	32.0	31.6	32.7
Maximum Impulse Noise Reduction (Active)	32.1	32.3	33.8
Minimum Impulse Noise Reduction (Active)	30.5	31.2	30.6

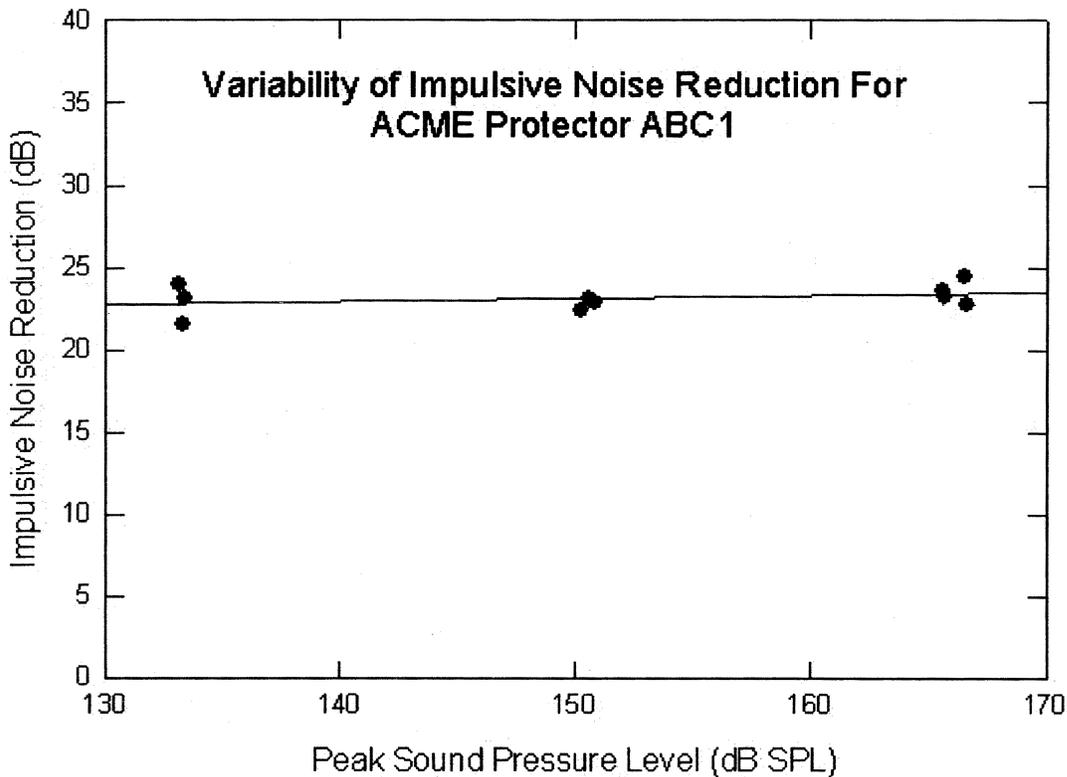


Figure 1. Example - Variability of Impulsive Noise Reduction with Peak Sound Pressure Level

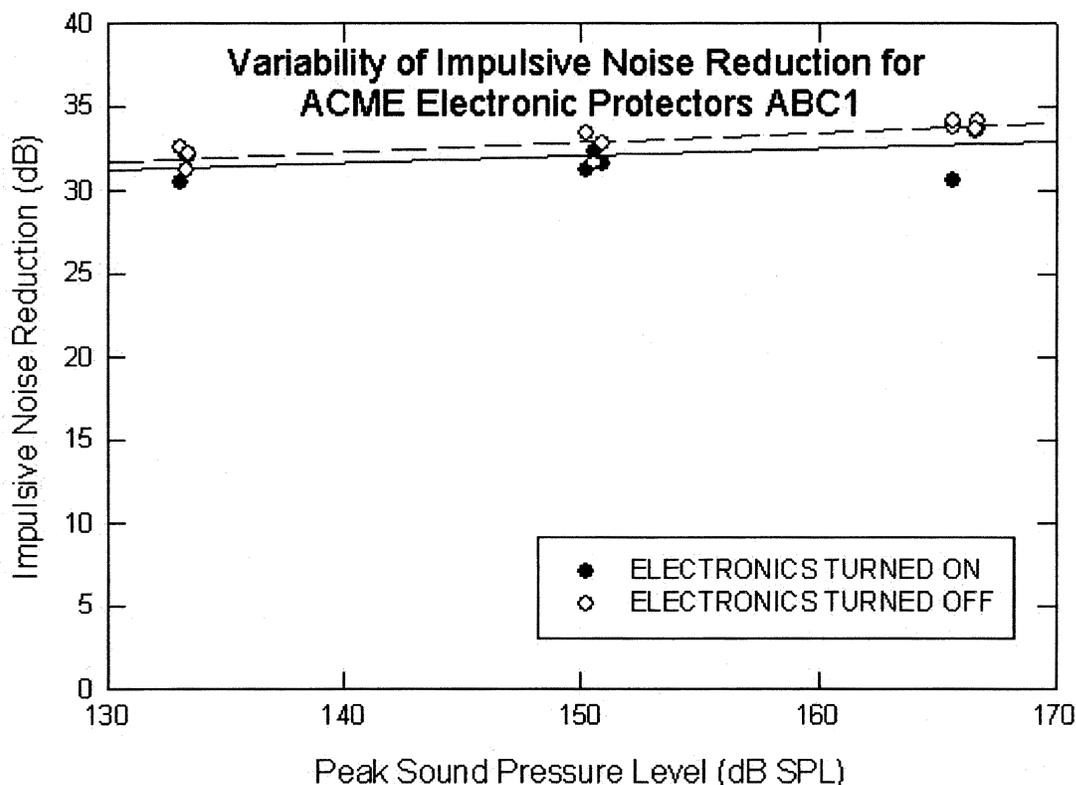


Figure 2. Example – Variability of Impulsive Noise Reduction with Peak Sound Pressure Level

(d) The battery type, number of batteries and expected operating time for the product as appropriate.

(e) The following statement: “This device is recommended for use in impulsive noise environments having peak levels between 130 to X dB SPL.” (X dB is equal to 130 dB plus the mean passive impulsive noise reduction)

(f) The following cautionary note shall be included for ACTIVE noise reduction hearing protectors. “Caution: This device is not intended for use in impulsive noise environments exceeding Y dB peak sound pressure levels. The risk of hearing loss increases with multiple exposures to high level peak impulses.” (Y dB is equal to 130 dB plus the mean active impulsive noise reduction)

(g) The following statement: “The PASSIVE Noise Reduction Rating is based on the attenuation of continuous noise and is not an accurate indicator of the protection attainable against impulsive noise. The IMPULSIVE Noise Reduction Rating is based on the attenuation of high-level impulsive noise and is not an accurate indicator of the protection attainable for continuous noise.”

(h) The following example shall be included for amplitude-sensitive devices:

“Example:

(1) X: the peak sound pressure level as measured at the user’s location in decibels A-weighted (dBA).

(2) Lesser and greater NRR: the IMPULSIVE ratings obtained from the primary label.

(3)(i) The approximate range of sound pressure levels at the user’s ears with hearing protection:

(A) (X – Lesser NRR) = the greater effective peak sound pressure level.

(B) (X – Greater NRR) = the lesser effective peak sound pressure level.

(ii) The peak sound pressure level at the user’s ears will depend upon the fit and operating mode of the protector. For a more accurate estimate of the impulsive noise reduction the user is directed to the graph of Figure 2 of this section.”

11. Section 211.204–7 is added to read as follows:

§ 211.204–7 Supporting information for Amplitude-Sensitive Hearing Protection Devices with Active Noise Reduction.

Devices that incorporate both ACTIVE noise reduction and ACTIVE amplitude-sensitive noise reduction shall comply

with both sections § 211.204–1(b) and § 211.204–1(c) for primary labeling and with both sections § 211.204–5 and § 211.204–6 for supporting information.

12. Section 211.205 is revised to read as follows:

§ 211.205 Special claims and exceptions.

(a) Any manufacturer wishing to make claims regarding the acoustic effectiveness of a device, other than its Noise Reduction Ratings, must demonstrate the validity of such claims, including the presentation of test data and the specific methods used to validate the claims.

(b) Any request concerning an exception must be supported by scientific test data that establishes the exception without doubt, and must be submitted for consideration and approval to: The Administrator or his designee at U.S. EPA, Office of the Administrator. The Agency will notify the manufacturer within thirty (30) business days of receipt of the request if: the special claim or exception is approved, disapproved, additional information is needed, or the Agency needs additional time to consider the request.

13. Section 211.206–1 is revised to read as follows:

§ 211.206–1 Real ear attenuation at threshold (REAT).

(a) The provisions of this section shall apply to the following devices:

- (1) Passive Hearing Protection Devices;
- (2) Active Hearing Protection Devices in their “off” mode of operation;
- (3) Active Noise Reduction Hearing Protection Devices in their “off” mode of operation; and
- (4) Amplitude-Sensitive Hearing Protection Devices in their “off” mode of operation (if they incorporate electronics).

(b) The sound attenuation to be used in the calculation of the Noise Reduction Rating shall be determined in accordance with all clauses of ANSI/ASA S12.6–2008 “Methods for Measuring the Real-ear Attenuation of Hearing Protectors,” incorporated by reference at § 211.213 of this subpart, except as stipulated in the identified ANSI clauses below:

(1) For subpart B, the word “requester” as used in ANSI/ASA S12.6–2008 shall be replaced with the word “manufacturer” as defined in § 211.203.

(2) For subpart B, only those requirements addressing Method A of ANSI/ASA S12.6–2008 shall be applicable.

(3) Clause 3 of ANSI/ASA S12.6–2008. Terms and Definitions. The definitions given in § 211.203 shall be used in this subpart.

(4) Clause 4 of ANSI/ASA S12.6–2008. Physical Requirements of Test Facility. For subpart B, the following new provision shall be in addition to that of Clause 4.3.1: “The electrical test signals measured at the input terminals of the speaker or speakers shall consist of one-third octave bands of pink or white noise, with a spectrum shape equivalent to that which would be created by a filter meeting the requirements of Class O of ANSI S1.11–2004, incorporated by reference at § 211.213 of this subpart. The mode of operation in changing from one band to another shall be a discrete step function; a gradual continuously adjustable mode of change shall not be used.”

(5) Clause 5 of ANSI/ASA S12.6–2008—Test Subjects.

(i) For subpart B, the following new provision shall be in addition to Clause 5.3. “Prior to audiometric qualification and participation in attenuation testing, the dimensions of both the right and left ear canals, and the bitracion width and head height of the test subject shall be measured in accordance with the procedure of ANSI 12.6–2008, Annex B.

(6) Clause 6 of ANSI/ASA S12.6–2008. Product Samples.

(i) For subpart B, the following new provisions shall be in addition to Clause 6.1 of ANSI/ASA S12.6–2008:

(A) Formable ear plugs: a minimum of three pairs of ear plugs per test subject shall be provided. A new pair shall be used for training and for each subsequent occluded trial. When a specific product is available in different sizes, three pairs of each product size shall be provided per test subject.

(B) Premolded ear plugs and semi-insert devices: a minimum of one pair of ear plugs per test subject shall be provided. When a specific product is available in different sizes, one pair of each product size shall be provided per test subject.

(C) Custom ear plugs: One pair of custom ear plugs for each test subject shall be provided.

(D) Ear muffs: a minimum of one pair of ear muffs for every two test subjects shall be provided. When a specific product is available in different sizes, one pair of each product size shall be provided for every two test subjects.

(E) Ear muffs attached to a hardhat: The hardhat sample shall be specified by the manufacturer of the hearing protection device. A minimum of one pair of ear muffs for every two test subjects shall be provided. When an ear muff is available in different sizes, one pair of each size shall be provided for every two test subjects. For each size of hardhat, two samples shall be provided in each size.

(F) Helmets: a minimum of one sample shall be provided for each size helmet to be tested. Helmets incorporating other hearing protection devices (e.g. ear plugs, ear muffs) shall be tested as a system. The hearing protection device(s) incorporated in a helmet shall be provided by the manufacturer of the helmet. The minimum number of samples of the hearing protection device(s) to be used in combination with the helmet shall be as specified in paragraph (b)(6)(i)(A) through (E) of this section.

(ii) For subpart B, the following new provisions shall be in addition to Clause 6.2 of ANSI/ASA S12.6–2008: “Ear muffs and semi-insert devices with bands or attached to hardhats, which include adjustment mechanisms allowing the band force to be varied, shall be initially set to the minimum application force of their adjustment range prior to being provided to each subject. During fitting, the devices may be readjusted per the provisions of Clauses 8.1 of ANSI/ASA S12.6–2008.”

(iii) For subpart B, Clause 6.3 of ANSI/ASA S12.6–2008, shall not be applicable.

(7) Clause 7 of ANSI/ASA S12.6–2008—Psychophysical Procedure.

(i) For subpart B, Clause 7.1.1 of ANSI/ASA S12.6–2008, shall not be applicable.

(ii) For subpart B, Clause 7.5 of ANSI/ASA S12.6–2008, shall read as follows: “If the range of open threshold measurements at any frequency exceeds 6 dB during a test session, the threshold at that frequency shall be retested until two open thresholds are obtained within 6 dB of each other.”

(8) Clause 8 of ANSI/ASA S12.6–2008—Method A: Trained-subject Fit:

(i) For subpart B, the following new provisions shall be in addition to Clause 8.1 of ANSI/ASA S12.6–2008:

(A) “The experimenter shall give each subject precise directions and practice in fitting the hearing protector in accordance with the instructions that are provided by the manufacturer with the product to all users. The manufacturer’s instructions shall not be modified by the experimenter’s own knowledge in fitting the same or similar devices. No indicators, marks, or lubricants shall be utilized unless supplied or recommended by the manufacturer as a part of normal use. No alterations shall be made to the device to facilitate fitting. When applicable the experimenter shall assist the subject in selecting the appropriate size hearing protector, and in adjusting products with variable band force. Subjects can select the size appropriate to fit their right and left ears. The selected size(s) must be used throughout the two product trials.

(B) The experimenter may provide demonstrations of the manufacturer’s fitting instructions during the training period. The experimenter may personally fit the device to the test subject as part of the training process. The experimenter shall train the subject in the use of the fitting noise (Clause 4.3.6 of ANSI/ASA S12.6–2008) to assist in fitting the protector. There is no limitation on either the duration of the training or the number of practice fittings that may be performed. Trial sound attenuation measurements during the training period are prohibited. Once the experimenter has determined the subject can properly fit the hearing protector, the test shall begin.”

(ii) For subpart B, the following new provisions shall be in addition to Clause 8.2 of ANSI/ASA S12.6–2008: “After training, a subject shall be dismissed if the subject cannot obtain an acceptable product fit based on any one of the following criteria:

(A) Subjects assessment of the quality of the hearing protector fit based on

listening to the loudness of the fitting noise,

(B) Visual evaluation by the experimenter,

(C) Tactile evaluation by the experimenter working in conjunction with the subject,

(D) Guidance specific to that product as provided by the manufacturer,

(E) Repeated failure to meet the requirements of Clause 7.5

(F) Illness or physical inability to participate on the day of the test, and

(G) Inability to remain attentive during instruction or testing sessions.

Subjects shall not be retested or dismissed as the result of the attenuation they obtained during the testing process.”

(iii) For subpart B, the following new provisions shall be in addition to Clause 8.3 of ANSI/ASA S12.6–2008:

(A) “For the occluded tests, the subject shall fit the hearing protector without the experimenter present in the test chamber. The fitting noise shall be introduced into the test chamber and the subject shall be told to manipulate the hearing protector to obtain the lowest level of perceived noise. The experimenter shall observe the subject during the fitting test from outside the chamber. Once the subject is satisfied with the fit, and after observing the quiet period specified in Clause 7.6 and the waiting period specified in Clause 7.7 of ANSI/ASA S12.6–2008, the test shall begin.

(B) Adjustments of the fit of the hearing protector during the occluded threshold tests are not allowed. However, the subject shall be instructed to inform the experimenter if, during the test, a change in fit of the device is noticed, and if so, the test shall be stopped. The subject shall refit the device and the occluded threshold test restarted from the beginning. If this occurs a second time the occluded threshold testing shall be completed without refit and the attenuation data shall be used in the computation of the rating.”

(9) For subpart B, Clause 9 of ANSI/ASA S12.6–2008 is not applicable.

14. Section 211.206–2 is revised to read as follows:

§ 211.206–2 Active noise reduction (ANR).

The provisions of this section shall apply to all Active Noise Reduction hearing protection devices as defined in § 211.203(u)(7).

(a) The measurement of active sound attenuation requisite to the Noise Reduction Rating for Active Noise

Reduction hearing protection devices shall be in accordance with the methods defined in this section and only those clauses of ANSI S12.42–1995 (R2004), incorporated by reference at § 211.213 of this subpart, stated below. The octave band attenuation shall be calculated using one-third octave band insertion loss measurements as described in paragraph (m)(2) of this section.

(b) The definitions given in § 211.203 shall be used.

(c) Acoustic Environment of Test Room: The requirements of this subpart shall be applicable to measurements of all Active Noise Reduction devices.

(1) Sound Field Generation Equipment: For subpart B, Clause 6.1 of ANSI/ASA S12.6–2008, shall be applicable.

(2) Sound Field Characteristics: For subpart B, Clauses 6.2.1 and 6.2.2 and Table 1 of ANSI S12.42, shall be applicable.

(3) Sound Field Frequency Characteristics: The sound field shall be a broad band noise incorporating frequencies from 100 to 10000 Hz. The difference between the maximum and minimum one-third octave band levels within the specified frequency range shall not exceed 10 dB. The difference between adjacent one-third octave band levels shall not exceed 3 dB.

(4) Sound Field Integration Time: The integration time shall not be less than 32 seconds using linear spectral averaged third octave band analysis.

(5) Sound Field Reference Levels ($L_{REF}(f)$): The signal generation equipment shall be capable of producing a continuous sound field of 105 dB SPL without a subject in the room. The field shall be measured with an ANSI Type I Pressure Microphone. The attenuation settings shall be recorded to permit replication.

(6) Ambient Noise Floor of Test Room: The noise floor of the test chamber, with all external equipment operating and no sound field present, shall be at least 60 dB less than sound field levels measured at each third octave band.

(7) Fitting Noise: The fitting noise shall be as specified in paragraph (c)(3) of this section and presented at a level of 85 dB SPL.

(d) Measurement Equipment:

(1) For subpart B, Clauses 6.3.1, 6.3.2, and 6.3.4 of ANSI S12.42, shall be applicable.

(2) For subpart B, the following new provision shall be in addition to Clause 6.3.6 of ANSI S12.42: “A spectrum analyzer using a third-octave band

analog or digital filter bank or a Type I sound level meter with a third-octave band filter set shall be used for measuring the sound pressure levels. The measurement system shall have sufficient dynamic range such that all measurements are a minimum of 10 dB above the instrumentation noise floor and test chamber’s ambient background noise level. When using a Fast Fourier Transform (FFT) analyzer, it shall have internally generated digital pseudorandom white and pink noise sources with known statistical characteristics, i.e., wide sense stationary, and shall be used for the third-octave band calculation of true random noises. All decibel measurements shall be referenced to $20 \times 10^{-6} \text{ N/m}^2$ (20 μPa).”

(3) Signal to Noise Ratio of the measurement microphone in the test chamber: The difference in microphone output levels with and without the sound field present shall be at least 10 dB in each third-octave band from 80 to 12500 Hz.

(e) Active Attenuation Method for ear muffs using Microphone In Real Ear (MIRE).

(1) MIRE Microphone: For subpart B, a microphone that fulfills the requirements set forth in Clause 8 of ANSI S12.42, is required.

(2) For subpart B, the following new provision shall be in addition to Clause 8.1.2 of ANSI/ASA S12.6–2008: “The microphone may be wireless or wired. If wired, the wires from the microphone, including insulation, shall not be more than 0.3204 millimeters (0.0126 inches) in diameter to minimize leakage of sound into the protector cavity.”

(3) For subpart B, the following new provision shall be in addition to Clause 8.1.3 of ANSI/ASA S12.6–2008: “The experimenter shall fit appropriate ear plugs into the subject’s ear canals such that their external surfaces are flush with the base of each ears conchae. The subject shall be instructed that removal of any hearing protector is prohibited during the test without permission from the experimenter.”

(4) Position of microphone: The MIRE microphone shall be positioned by the experimenter on the external surface of the ear plug at the entrance of the ear canal, as shown in Figure 1 of this section. The sensing surface shall be perpendicular to the axis of the ear canal, centered in the ear canal and directed away from the center of the subject’s head.

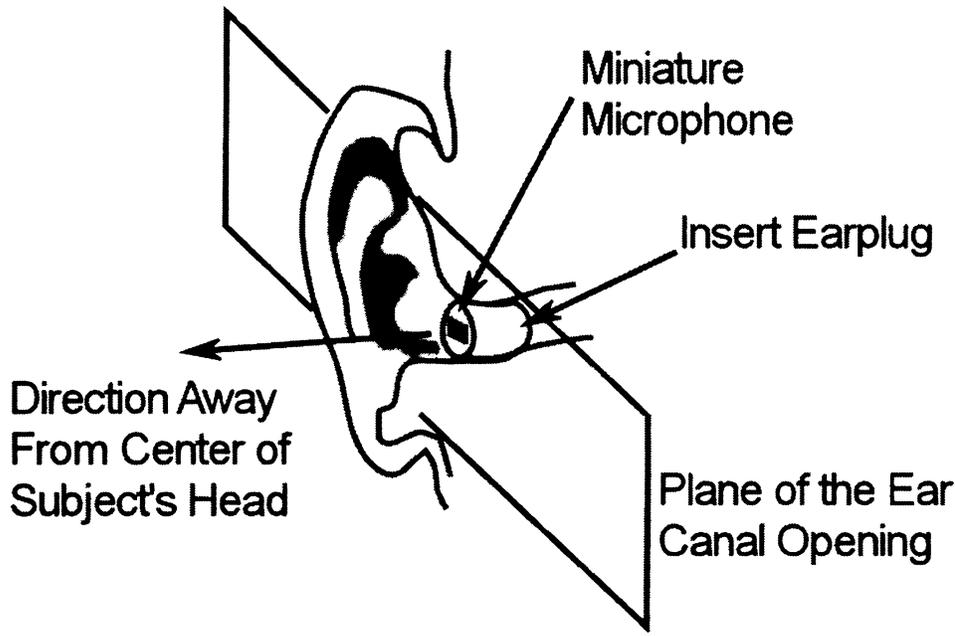


Figure 1. MIRE microphone position for measuring the Active Noise Reduction of ear muffs.

(f) Product selection:

(1) Ear muffs: A minimum of one pair of ear muffs for every two test subjects shall be provided. Subjects shall use the same ear muff as for the REAT testing. When a specific product is available in different sizes, one pair of each product size shall be provided for every two test subjects.

(2) Ear muffs attached to a hardhat: The hardhat sample shall be specified by the manufacturer of the hearing protection device. A minimum of one pair of ear muffs for every two test subjects shall be provided. When an ear muff is available in different sizes, one pair of each size shall be provided for every two test subjects. For each size of hard hat, two samples shall be provided in each size.

(3) Helmets: A minimum of one sample for each size helmet to be tested shall be provided. Helmets incorporating ear muffs shall be tested as a system. The integral ear muffs for a helmet shall be provided by the manufacturer of the helmet. If the ear muffs are removable, the minimum number to be used in combination with the helmet shall be as specified in § 211.206–1(b)(6)(i)(D).

(g) Measurement Procedure:

(1) Subject Selection: Only those subjects who completed the REAT tests with protectors specified in § 211.206–1(a)(3) shall be used for the MIRE tests set forth in this section.

(2) Subject Position: A head-positioning device, such as a plumb-bob to the nose or the forehead of the subject, shall be used to maintain the subject's head at the reference point. The head positioning device shall not transmit to the head vibrations that affect the threshold measurements, and shall not measurably affect the uniformity of the sound field of the room as specified in Clause 6.2.1 of ANSI S12.42. The use of a headrest or bite bar is not permitted.

(h) Fitting the protectors:

(1) The subject shall fit the protector as instructed for the REAT testing. No additional fitting training shall be given. However, the experimenter shall ensure that the integrity of the MIRE microphone and its wires is maintained during the fit process.

(2) The fitting noise shall be introduced into the test chamber and the subject shall be told to adjust the hearing protector to minimize the level of the perceived noise.

(3) To allow hearing protectors to conform to the subject's ears and/or head, MIRE measurements shall begin a minimum of two minutes after the hearing protectors have been fitted unless the manufacturer's standard instructions state otherwise.

(4) Adjustments of hearing protector fit during the test are not permitted. The subject shall be told to inform the experimenter if a change in the fit of the

device is noticed. If the experimenter is so informed, the occluded test shall be stopped. The subject shall refit the device and the experimenter shall confirm the integrity of the MIRE system, after which the test shall be restarted from the beginning. If change in the fit occurs a second time but the MIRE system is unaffected, the test shall be completed without refit and the attenuation data shall be used in the computation of the active noise reduction.

(i) MIRE Sound Levels with Protectors Activated ($L_{TOTAL}(f)$):

(1) The experimenter shall verify that the device is activated as specified by the manufacturer's standard instructions.

(2) The sound field shall be presented in the test chamber at the reference level of 105 dB SPL as specified in paragraph (c)(5) of this section.

(3) The MIRE output signal shall be measured in one-third octave bands ($L_{TOTAL}(f)$) using linear spectral averaging and an integration time of no less than 32 seconds.

(j) MIRE Sound Levels with Protectors Deactivated ($L_{PASSIVE}(f)$):

(1) The experimenter shall verify that the device is deactivated as specified by the manufacturer's standard instructions.

(2) The sound field shall be presented in the test chamber at the reference level

of 105 dB SPL as specified in paragraph (c)(5) of this section.

(3) The MIRE output signal shall be measured in one-third octave bands ($L_{PASSIVE}(f)$) using linear spectral averaging and an integration time of no less than 32 seconds.

(4) The measurements in paragraph (i)(j) of this section shall be repeated and the $L_{PASSIVE}(f)$ and $L_{TOTAL}(f)$ levels for each measurement recorded.

(5) Verification of MIRE microphone position: Upon completion of the measurements in paragraph (i)(j) of this section, the experimenter shall confirm the position of the MIRE has not changed. If the position has changed, the measurements shall be repeated.

(k) Active Attenuation Method for ear plugs using Acoustic Test Fixture (ATF).

(1) Acoustic Test Fixture:

(i) The ATF shall incorporate two ear canal couplers and ear simulators.

(ii) The ATF ear simulators shall comply with the International Electrotechnical Commission (IEC) specification 60711—"Occluded-ear simulator for the measurement of earphones coupled to the ear by ear inserts,"

(iii) The length of the ear canal couplers shall provide a residual volume of between 0.5 and 2.0 cubic centimeters after insertion of the ear plug.

(iv) The ATF microphones shall meet or exceed the following minimum specifications.

(A) Frequency range: 20 to 12500 Hz.

(B) Dynamic range: 40 to 130 dB SPL.

(v) The insertion loss of the ATF shall not be less than 60 dB for a sound field as specified in § 211.206-2(c)(5).

(2) Product selection:

(i) Custom Ear plugs:

(A) The testing lab shall provide the manufacturer with impressions of the ATF ear canal that provide a residual volume between 0.5 cubic centimeters (cc) and 1.0 cc.

(B) The manufacturer shall provide the testing lab a minimum of five ANR electronic control units and five pairs of ANR ear plugs that are custom fitted to the ATF ear canal coupler.

(ii) Non-custom Ear plugs:

(A) The manufacturer shall provide the testing lab a minimum of five ANR electronic control units and five pairs of ANR ear plugs.

(B) Alternatively, the ear plugs from the REAT test may be reused for this ATF test.

(3) Measurement Procedure for Active Noise Reduction Performance of ear plugs.

(i) Fitting the protectors:

(A) The experimenter shall fit the protectors into the ear couplers of the ATF such that their respective residual volumes are not less than 0.5 cc and no greater than 1.0 cc.

(ii) ATF Sound Levels with Protectors Activated ($L_{TOTAL}(f)$):

(A) The experimenter shall activate the device as specified by the manufacturer's standard instructions.

(B) The sound field in the test room shall be at the reference level of 105 dB SPL as specified in paragraph (c)(5) of this section.

(C) The output signals of the ATF microphone(s) shall be measured in one-third octave bands ($L_{TOTAL}(f)$) using linear spectral averaging and a minimum integration time of 32 seconds.

(iii) ATF Sound Levels with Protectors Deactivated ($L_{PASSIVE}(f)$):

(A) The experimenter shall deactivate the device as specified by the manufacturer's standard instructions.

(B) The sound field in the test room shall be at the reference level of 105 dB SPL as specified in paragraph (c)(5) of this section.

(C) The ATF microphone(s) output signal shall be measured in one-third octave bands ($L_{PASSIVE}(f)$) using linear spectral averaging and a minimum integration time of 32 seconds.

(D) The measurements in paragraphs (k)(3)(ii) and (iii) of this section shall be repeated for a total of forty trials. Each ANR control unit and each pair of ear plugs shall be used an equal number of times. The $L_{PASSIVE}(f)$ and $L_{TOTAL}(f)$ levels for each measurement shall be recorded.

(1) ANR performance for helmets with integral ear plugs or ear muffs or both ear plugs and ear muffs.

(1) The tests set forth in paragraph (k)(3) of this section for ANR muffs and plugs shall be used singularly or in combination as appropriate.

(m) Calculation of Attenuation of ANR devices:

(1) The passive attenuation for each subject shall be the average of the individual REAT attenuation measurements for octave band frequencies from 125 to 8000 Hz.

(2) The octave band active attenuation for each trial shall be calculated using the third octave band insertion loss measurements (from 100 to 10000 Hz), as follows:

(i) L_{ACTIVE} (one-third octave band insertion losses) for each trial for each one-third octave band shall be calculated as:

$$(A) L_{ACTIVE} (1/3 OB) = L_{TOTAL} - L_{PASSIVE}$$

(B) L_{ACTIVE} (octave band insertion losses) for each trial shall be calculated as the median of the one-third octave band active attenuations, described in § 211.206-2(k)(3)(ii) and (iii), measured for both the right and left ears.

(C) An example calculation is presented in Table 1 of this section. The six (6) insertion losses for the active mode have a median of 11.4 dB. The six values are sorted first (10.4, 10.8, 11.1, 11.7, 12.1 and 12.6). The values 11.1 and 11.7 bracket the 50th percentile and their average is 11.4 dB.

TABLE 1—EXAMPLE OF THE MEDIAN OCTAVE BAND INSERTION LOSS COMBINED WITH REAT FOR ACTIVE MODE

	- 1/3 octave	Center band	+ 1/3 octave
REAT Attenuation		25.4	
Right Ear Active Insertion Loss	10.4	12.1	11.7
Left Ear Active Insertion Loss	10.8	11.1	12.6
Median Insertion Loss		11.4	
REAT + Median Insertion Loss		36.8	

(3) The total octave band attenuation for each trial in the Active mode (electronics turned on) shall be the sum of the REAT octave band attenuations and the L_{ACTIVE} octave band insertion losses as computed in paragraph (m)(2) of this section. These total octave band

attenuation values ($REAT + L_{ACTIVE}$) shall be used in the computation of the NRR and the NRR_G as specified in ANSI S12.68-2007. If the total octave band attenuation values exceed 50 dB in any band then a cautionary note must be provided regarding the influence of

bone conduction according to § 211.204-5(j).

15. Section 211.206-3 is added to read as follows:

§ 211.206–3 Reduction of Peak Impulsive Noise.

Hearing protection devices sold or offered on the basis of providing protection from impulsive noises in excess of 130 dB peak sound pressure level shall be tested in accordance with this section.

(a) Product Selection.

(1) Custom Ear plugs:

(i) The manufacturer shall provide the testing lab a minimum of five pairs of ear plugs that are custom fit to the ear canal couplers of the ATF.

(ii) The testing lab shall provide the manufacturer with impressions of the ATF ear canals such that the residual volume is not less than 0.5 cubic centimeters (cc) or greater than 1.0 cc.

(2) Ear plugs:

(i) The manufacturer shall provide the testing lab a minimum of five pairs of ear plugs selected at random from production lots.

(ii) Alternatively, the ear plugs from the REAT test may be reused for this ATF test.

(iii) The testing lab shall insert the ear plug such that the residual volume is not less than 0.5 cc or greater than 1.0 cc.

(3) Ear muffs:

(i) The manufacturer shall provide the testing lab a minimum of five pairs of ear muffs selected at random from production lots, appropriately sized for the ATF.

(ii) Alternatively, the ear muffs from the REAT test may be reused for this ATF test if they meet the ATF size requirements.

(4) Ear muffs attached to a hardhat:

(i) The manufacturer shall provide the testing lab a minimum of five pairs of ear muffs attached to a hardhat selected

at random from production lots, appropriately sized for the ATF.

(ii) Alternatively, the hard hat(s) and ear muffs from the REAT test may be reused for this test if they meet the ATF size requirements.

(5) Helmets incorporating ear cups:

(i) Helmets incorporating ear cups shall be tested as a system for impulse noise reduction. The manufacturer shall provide the testing lab a minimum of one helmet and five pairs of ear cups selected at random from production lots, appropriately sized for the ATF.

(ii) Reserved.

(6) Combination of ear plugs, ear muffs and/or helmets:

(i) The manufacturer shall provide the testing lab five (5) pairs of each protector. The device shall be tested as a system in combination as appropriate.

(ii) Reserved.

(b) Impulsive Noise Characteristics.

(1) Three different peak impulse noise levels shall be used. The peak impulse levels shall be in the following ranges 130–134 dB, 148–152 dB and 166–170 dB. Manufacturers may elect to test at levels in excess of the required 170 dB, in which case notice must be given on both the primary and secondary labels as required in § 211.204–1(c) and § 211.204–6 and the information reported to the EPA on the required test report per § 211.212–5.

(2) The minimum permissible A-duration shall not be less than 0.5 milliseconds and the maximum shall not be greater than 2.0 milliseconds.

(3) The peak level and A-duration of the impulse noise shall not be affected by acoustic reflections.

(c) Measurement Equipment.

(1) Impulsive Acoustic Test Fixture or Dummy Head (IATF).

(i) The hearing protection device shall be tested on an IATF which meets the requirements of ANSI S12.42–1995, Section 9.1—*Acoustic Test Fixture Method*.

(ii) The insertion loss of the IATF shall not be less than 65 dB for impulses in the ranges described in paragraph (b)(1) of this section.

(iii) The IATF shall include two identical simulated ears, including representative pinnae, conchas, and ear canal coupler, and identical instrumentation. The ear canal coupler shall be in accordance with IEC 60711 (1984) but incorporate a 6.35 mm (0.25 inch) pressure microphone to satisfy the required dynamic range of 130 db to 170 dB.

(2) Free-Field Pressure Probe/Microphone.

(i) A free-field pressure probe/microphone capable of accurately measuring impulse levels of 180 dB peak SPL shall be used as the external microphone.

(ii) The free-field pressure probe shall be a cylindrical body as depicted in Figure 1 of this section, having a minimum length, d_3 , of 40.64 cm (16 inches), a maximum diameter of 5.08 cm (2 inches) and a taper from the tip, d_1 , of 5.08 to 10.16 cm (2 to 4 inches). The pressure transducer shall be flush with the side of the cylindrical body and located a distance d_2 , from the tip, of between 15.24 and 20.32 cm (6 and 8 inches).

(iii) The free-field pressure probe/microphone shall be positioned as shown in Figure 2 of this section, equidistant and at the same elevation as the microphone(s) of the IATF from the impulse noise source.

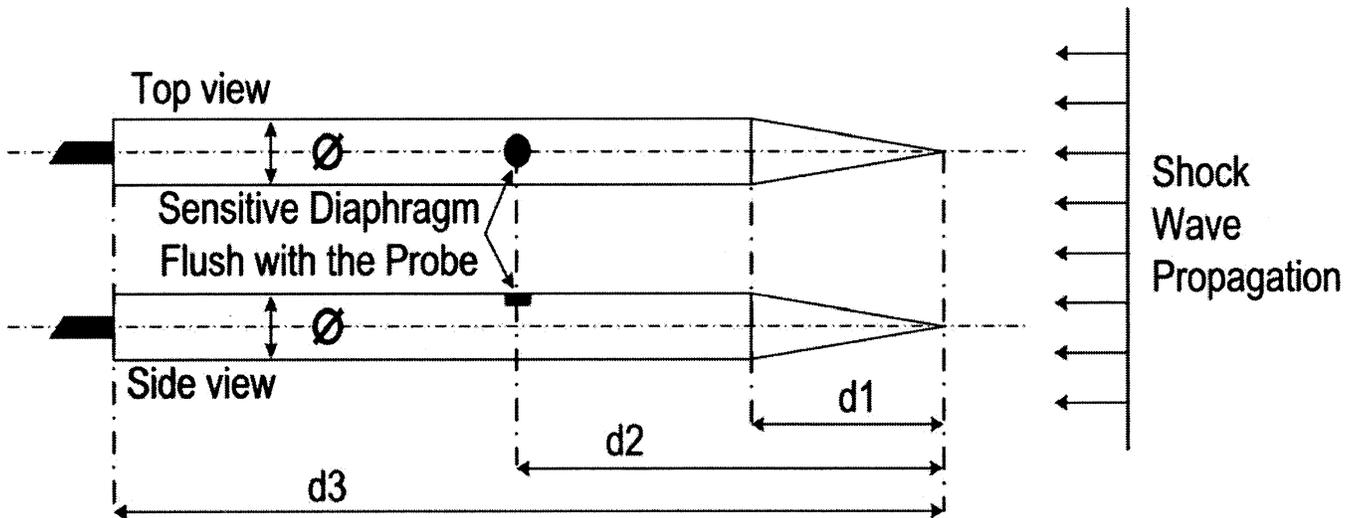


Figure 1. Free Field Pressure Probe

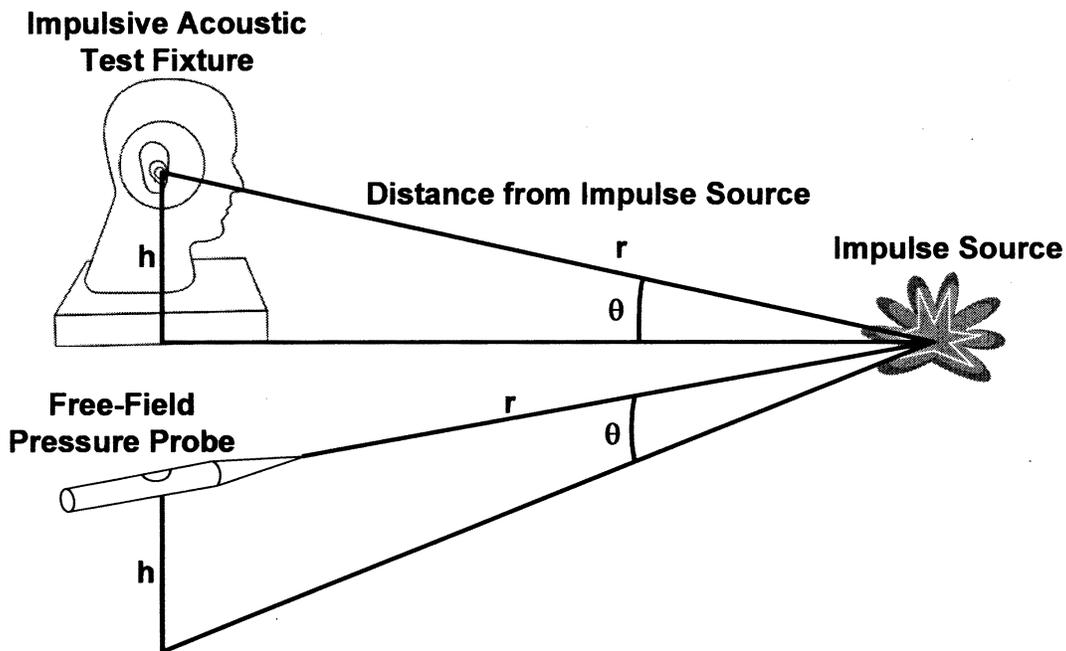


Figure 2. Configuration of Impulsive Acoustic Test Fixture, Free-field pressure probe and the impulse noise source.

(3) Impulsive Noise Measurement Instrumentation

(i) Sampling rate: The data acquisition system shall be capable of simultaneously sampling the acoustic response of the two ears of the IATF and

the free-field pressure probe/microphone with a minimum sampling rate of 96,000 samples per second (96 kHz) for each channel.

(ii) Signal to Noise Ratio: The Signal to Noise Ratio of any captured signal

must be greater than 10 dB from 100 to 10000 Hz.

(iii) Sampling Resolution: The resolution of the data acquisition system shall be a minimum of 16-bits.

(4) Instrumentation layout for Measurement of Reduction of Peak Impulsive Noise.

(i) The instrumentation shall be arranged such that each ear of the IATF and the free-field pressure probe/microphone are located equidistant from the impulse noise source as shown in Figure 2 of this section.

(5) Measurement Procedure for the Impulsive Noise Reduction Rating.

(i) Calibration of the Free-field to ear canal transfer function.

(ii) Five impulses shall be produced in the range of 148 to 152 dB peak impulse sound pressure level. The measurement of the free field to ear canal transfer function is not required if impulse peaks are within ± 0.5 dB.

(iii) The complex free-field to ear canal transfer functions ($H_{FF-Right-i}$ and $H_{FF-Left-i}$) shall be calculated for each impulse and each ear.

(iv) The free-field to ear canal transfer functions ($H_{FF-Right}$ and $H_{FF-Left}$) shall be the average of the five respective individual calculated transfer functions.

(A) $H_{FF-Right, i}(f) = F(P_{EAR-Right,i}(t))/F(P_{FF, i}(t))$

(B) $H_{FF-Left, i}(f) = F(P_{EAR-Left,i}(t))/F(P_{FF, i}(t))$

(6) Measurement of the Peak Impulsive Noise Reduction for a hearing protection device.

(i) For each sample of the hearing protection device, a minimum of one impulse at each of the three pressure ranges shall be produced as specified in paragraph (b)(1) of this section. The peak pressure can be adjusted by varying the acoustic impulse source and/or altering the distance from the source to the test fixture.

(ii) Each impulse shall be recorded from the free-field, IATF left and right ear canal microphones by the data acquisition system. The total duration of the captured signal shall not be less than 50 milliseconds. The time duration from the beginning of the captured signal to its peak amplitude shall be a minimum of 1.0 millisecond. The time waveforms from the IATF and the free-field pressure probe/microphone shall be sampled simultaneously.

(iii) The measured time waveforms shall be labeled as $P_{FF, j, k}$ for the free-field pressure probe/microphone and as $P_{ATF-RIGHT, j, k}$ and $P_{ATF-LEFT, j, k}$ for the acoustic test fixture/dummy head ear microphones, where $j = 1$ to 5 for the protector samples, and $k=1$ to 3 are the respective impulse noise peak ranges, respectively.

(iv) The hearing protector shall be removed and refitted to the IATF for each impulse noise trial.

(v) If an acoustic impulse or HPD fitting is unacceptable, the HPD shall be

refitted and the impulse trial shall be repeated. The data from an unacceptable trial shall be discarded.

16. Section 211.206–4 is added to read as follows:

§ 211.206–4 Consideration of alternative test procedures.

The Administrator may approve applications from manufacturers of hearing protectors for the approval of test procedures which differ from those contained in this subpart so long as the alternative procedures have been demonstrated to correlate with the prescribed procedures. To be acceptable, alternative test procedures must be such that the hearing protector test results obtained will fulfill all test and data requirements prescribed in § 211.206 when the product is tested in accordance with the specified methodology. After approval by the Administrator, testing conducted by manufacturers using alternative procedures may be accepted by the Administrator for all purposes including, but not limited to, production verification testing and selective enforcement audit testing.

§ 211.207 [Amended]

17. Section 211.207 is amended by removing the introductory text and Figure 2.

18. Section 211.207–1 is added to read as follows:

§ 211.207–1 Computation of NRR based on statistical and graphical methods.

(a) The Noise Reduction Rating (NRR) in this subpart shall be determined in accordance with the procedures set forth in Clauses 5, 6 and 7 of ANSI/ASA S12.68–2007, incorporated by reference at § 211.213 of this subpart, except as stipulated in paragraphs (b)(1) through (4), (c)(1) and (2), (d), and (e) of this section.

(b) ANSI Clause 5: The computation of the NRR, as set forth in this clause, shall be used to determine the “PASSIVE mode” noise reduction performance of all hearing protector devices subject to this regulation.

(1) The “Noise Level Reduction Statistic for use with A-weighting (NRS_A)” shall be replaced by the “Noise Reduction Rating (NRR)” as used in this subpart.

(2) For subpart B, ANSI Clause 5.1 shall be replaced by the paragraph (b)(3) of this section.

(3) “The NRR for a hearing protector, as used in this subpart, is comprised of a pair of values representing the lower and upper A-weighted noise level reductions that can be expected when the device is used as directed by the manufacturers’ instructions.”

(4) ANSI Clause 5.2: The value of α as used in this subpart shall be for the 80% and 20% protection performance and equal to 0.8416 and -0.8416 respectively.

(c) ANSI Clause 6: The computation of the NRR, as set forth in this clause, shall be used to determine the “ACTIVE mode” noise reduction performance of all hearing protector devices that rely in whole or in part on either mechanical, electronic and/or acoustically variable (with respect to sound pressure level) methods of increasing their noise reduction performance.

(1) For subpart B, ANSI Clause 6.0: the “Noise Level Reduction Statistic, Graphical (NRS_G)” shall be replaced by the “Noise Reduction Rating, Graphical (NRR_G)”.

(2) This method shall not be used to compute either the “PASSIVE mode” or the “ACTIVE mode” performance of hearing protectors intended for protection from high level impulsive noise. The appropriate computation is given in paragraph § 211.207–4.

(d) ANSI Clause 7—Octave-Band Method: The computation of the mean attenuation, the standard deviation of attenuations and the Assumed Protection Values (APVs) as a function of frequency, as set forth in this clause, shall be used for all hearing protectors for the “PASSIVE mode” and for active noise reduction hearing protectors in the “ACTIVE mode.”

(e) For subpart B, ANSI Annex A of ANSI/ASA 12.68–2007—“Noise Spectra Used in Calculating the NRR_A and NRR_G ,” shall be applicable.

19. Section 211.207–2 is added to read as follows:

§ 211.207–2 Computation of the Passive Noise Reduction Rating.

The PASSIVE Noise Reduction Rating shall be calculated using the REAT data obtained in § 211.206–1.

(a) Noise Reduction Rating: For each subject, the attenuations from both trials at each octave band frequency (125, 250, 500, 1000, 2000, 4000, and 8000 Hz) shall be averaged, yielding seven attenuations. The averaged attenuation data shall be used for the $R_{p, f(k)}$ in Equation 1 of ANSI S12.68–2007. The Noise Reduction Rating shall be determined according to Equations 1, 2, 3, 4, 5 and 6 as specified in Clause 5.2 of ANSI/ASA S12.68–2007, incorporated by reference at § 211.213 of this subpart, using the alpha (α) values of 0.8416 and -0.8416, corresponding to the 20th and 80th percentiles.

(b) Variability of Noise Reduction Rating with Spectral Levels: The variability of the Noise Reduction Rating with the spectral level of the

noise environment in which the hearing protector is worn shall be determined according to Equation 8 in Clause 6 of ANSI S12.68–2007 and shall use the noise spectra as specified in Annex B of ANSI S12.68 for determining the variability. For the variability of passive devices, the Estimated Noise Level Reduction shall be determined at the spectral balance values of $L_C - L_A = [-1, 2, 6 \text{ and } 13 \text{ dB}]$. The variability shall be determined for the 20th and 80th percentile assumed protection values. The variability results shall be reported in the supporting information specified in § 211.204–4.

(c) Mean attenuations and standard deviations: The mean attenuations and standard deviations across subjects as a function of octave band frequency (f) from 125 to 8000 Hz are determined as follows:

(1) The mean attenuations are:

$$m_f = \frac{1}{P} \sum_{p=1}^P R_{pf}$$

Where R_{pf} is the averaged attenuations for each subject and octave band frequency, P is the total number of subjects tested, p is the subject index.

(2) The standard deviations of the mean attenuation are:

$$s_f = \sqrt{\frac{1}{P-1} \sum_{p=1}^P (R_{pf} - m_f)^2}$$

Where R_{pf} is the averaged attenuations for each subject and octave band frequency, P is the total number of subjects tested, p is the subject index.

(d) Assumed Protection Values: The assumed protection values (APV_f) for the “passive mode” of a hearing protector as a function of octave band frequency (f) from 125 to 8000 Hz are determined as follows:

(1) The assumed protection values are $APV_f = m_f \pm \alpha s_f$

Where the 20th percentile APV is determined when $\alpha = +0.8416$ and the 80th percentile APV is determined when $\alpha = -0.8416$ is used.

(2) [Reserved]

20. Section 211.207–3 is added to read as follows:

§ 211.207–3 Computation of the Active Noise Reduction Rating.

The Active Noise Reduction Rating shall be calculated using total octave band attenuation determined in § 211–206–2(m).

(a) Noise Reduction Rating: The total octave band attenuation (the sum of the REAT octave band attenuations and the L_{ACTIVE} octave band insertion losses) shall be used for the R_{pf} in Equation

1 of ANSI S12.68–2007. The Noise Reduction Rating shall be determined according to Equations 1, 2, 3, 4, 5 and 6 as specified in Clause 5.2 of ANSI S12.68–2007, using the alpha (α) value of 0.8416 and -0.8416 , corresponding to the 20th and 80th percentiles.

(b) Variability of Noise Reduction Rating with Spectral Levels: The variability of the Noise Reduction Rating with the spectral level of the noise environment in which the hearing protector is worn, shall be determined according to Equation 8 in Clause 6 of ANSI S12.68–2007 and shall use the noise spectra as specified in Annex B of ANSI S12.68 for determining the variability.

(1) For the variability of passive devices, the Estimated Noise Level Reduction shall be determined at the spectral balance values of $L_C - L_A = [-1, 2, 6 \text{ and } 13 \text{ dB}]$. The variability shall be determined for the 20th and 80th percentile assumed protection values. The variability results shall be reported in the supporting information specified in § 211.204–4.

(2) The Estimated Noise Level Reduction (20th and 80th percentiles) determined for the spectral balance value of $L_C - L_A = 13 \text{ dB}$ shall be used to identify the performance of an active noise reduction hearing protection device in a low frequency noise environment.

(c) Mean attenuations and standard deviations: The mean total attenuations ($REAT + L_{ACTIVE}$) and standard deviations across subjects as a function of octave band frequency (f) from 125 to 8000 Hz are determined as follows:

(1) The mean attenuations are

$$m_f = \frac{1}{P} \sum_{p=1}^P R_{pf}$$

Where R_{pf} is the averaged total attenuation for each subject and octave band frequency, P is the total number of subjects tested, p is the subject index.

(2) The standard deviations of the mean attenuation are

$$s_f = \sqrt{\frac{1}{P-1} \sum_{p=1}^P (R_{pf} - m_f)^2}$$

Where R_{pf} is the averaged total attenuation for each subject and octave band frequency, P is the total number of subjects tested, p is the subject index.

(d) The standard deviations of the mean attenuation are

$$s_f = \sqrt{\frac{1}{P-1} \sum_{p=1}^P (R_{pf} - m_f)^2}$$

Where R_{pf} is the averaged total attenuation for each subject and octave band frequency, P is the total number of subjects tested, p is the subject index.

(1) The assumed protection values are $APV_f = m_f \pm \alpha s_f$

Where the 20th percentile APV is determined when $\alpha = +0.8416$ and the 80th percentile APV is determined when $\alpha = -0.8416$ is used.

(2) [Reserved]

21. Section 211.207–4 is added to read as follows:

§ 211.207–4 Computation of the Impulsive Noise Reduction Rating.

(a) The equivalent ear canal time waveform shall be calculated from the measured free-field waveform, $P_{FF,j,k}$, and the free field to the ear canal transfer function H_{FF} for each ear.

(b) These waveforms shall be referred to as $P_{FF-EAR-Left,j,k}$ and $P_{FF-EAR-Right,j,k}$ and shall be computed by applying the average free-field to ear canal transfer functions ($H_{FF-Right}$ and $H_{FF-Left}$) to the free-field waveforms (P_{FF}). The corrected waveforms shall be computed as:

$$P_{FF-EAR-Right,j,k}(f) = P_{FF,j,k}(f) * H_{FF-Right}(f),$$

$$P_{FF-EAR-Left,j,k}(f) = P_{FF,j,k}(f) * H_{FF-Left}(f),$$

$$P_{FF-Right,j,k}(t) = F^{-1}(P_{EAR-Right,j,k}(f)),$$

$$P_{FF-Left,j,k}(t) = F^{-1}(P_{EAR-Left,j,k}(f)),$$

Where:

$F^{-1}(\)$ is the inverse Fourier transform function. The respective waveforms and transfer functions are represented as linear quantities in the frequency domain.

(c) The reduction of the peak impulse, as affected by the hearing protection device, shall be:

$$(1) \Delta P_{Impulse-Right,k} = \sum_{j=1 \text{ to } 5} [\max(P_{FF-EAR-Right,j,k}) - \max(P_{ATF-Right,j,k})] / 5$$

$$(2) \Delta P_{Impulse-Left,k} = \sum_{j=1 \text{ to } 5} [\max(P_{FF-EAR-Left,j,k}) - \max(P_{ATF-Left,j,k})] / 5,$$

Where:

$\text{Max}(\)$ is the maximum positive peak pressure of the impulse.

(d) The average impulse noise reduction for each pressure range (k) shall be the average impulse noise reduction for each pressure range (k) shall be:

$$\Delta P_{Impulse,k} = [\text{avg}(\Delta P_{Impulse-Right,k}) + \text{avg}(\Delta P_{Impulse-Left,k})] / 2$$

(e) The three average impulse noise reductions shall be used to provide the data points for § 211.204–6, Table 2. The three average impulse noise reduction values shall be graphed with a range for the abscissa of 130 to 180 dB (re 20 μPa) and a range for the ordinate of 0 to 50

dB with the symbols connected by a solid line.

(f) The minimum of the three impulse noise reduction values calculated in paragraph (d) of this section shall be the lower endpoint in the impulse noise reduction rating as required in § 211.204–1(c) Figure 3.

(g) The maximum of the three impulse noise reduction values calculated in paragraph (d) of this section, shall be the upper endpoint in the impulse noise reduction rating as required in § 211.204–1(c) Figure 3.

22. Section 211.209 is added to read as follows:

§ 211.209 Maintenance of records.

(a) The manufacturer, as defined in § 211.203(aa), of any hearing protective device subject to this regulation must establish, maintain and retain the following adequately organized and indexed records.

(1) General records.

(i) Identification and description by category parameters of protectors comprising the manufacturer's product line;

(ii) A description of any procedures, other than those contained in this regulation used to perform noise attenuation tests on any test protector, and the results of those tests;

(iii) A record, signed by an authorized representative of the laboratory, of any calibration that was performed during testing by the test laboratory; and

(iv) A record of the date of manufacture of each protector subject to this regulation, keyed to the serial number or other coded identification contained in the supporting information required by § 211.204–4.

(2) Individual records for the test protectors. A complete record, or exact copies of the complete record of all noise attenuation tests performed (except tests performed by EPA directly) which includes all individual worksheets, and other documentation relating to each test required by subpart B.

(3) The manufacturer may fulfill this record retention requirement by keeping a copy of the labeling verification report that he has submitted to the EPA in the format recommended by the Administrator (see Appendix A of this part) and by establishing a record of the information required by § 211.212–5.

(4) The manufacturer must retain all required records for the life of each specific product line. Records may be retained as electronic or hard copy or reduced to microfilm, or other forms of data storage depending on the record retention procedures of the manufacturer.

22a. Section 211.209–1 is added to read as follows:

§ 211.209–1 Reporting requirements.

(a) The manufacturer must submit to the EPA, in hardcopy or electronic format, a completed coversheet according to Annex A, a copy of all authorized measurement information, including test results and calculated NRR values, obtained from the testing laboratory for each product or product category, within ten (10) business days of completion of the required test. The test results are to be in the format recommended in Appendix A and sent to: U.S. Environmental Protection Agency, Attn: Docket Center, Docket Number EPA–HQ–OAR–2003–0024, Mail Code—2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) On request by the Administrator, the manufacturer must submit to the Administrator information regarding the number of protectors, by category, produced or scheduled for production during the time period designated in the request.

23. Section 211.210–1 is revised to read as follows:

§ 211.210–1 General requirements.

(a) Each manufacturer of hearing protectors for distribution in commerce in the United States, which are subject to the requirements of this regulation as specified in § 211.201.

(1) Must affix a label to each product, as specified in § 211.204, that is readily visible at the point of sale to the ultimate purchaser or distribution to the prospective user.

(2) Must assure that each product meets or exceeds the sound attenuation values determined by the procedures in § 211.206 and explained in § 211.207.

(b) Product manufacturers who introduce protectors into commerce for sale to another manufacturer, as defined herein, for packaging and sale to ultimate purchaser or user, must provide to that manufacturer the attenuation values and standard deviations of each of the one-third octave band center frequencies as determined by the test procedures in § 211.206. The product manufacturer must also provide the Noise Reduction Ratings calculated according to the appropriate product as specified in § 211.207.

24. Section 211.210–2 is amended as follows:

- a. Revise paragraphs (a)(1) and (a)(2).
- b. Revise paragraph (b)(1).
- c. Add and reserve paragraph (b)(2).
- d. Revising paragraph (c).
- e. Designate the undesignated paragraph at the end of the section as paragraph (d).

§ 211.210–2 Labeling requirements.

(a)(1) A manufacturer responsible for labeling must satisfy the requirements of this subpart for a category of hearing protectors, as defined in § 211.203, before distributing that category of hearing protectors in commerce.

(2) A manufacturer may apply to the Administrator for an extension of time to comply with the labeling requirements of this subpart for a category of protectors that are currently being distributed in commerce. The Administrator may grant the manufacturer an extension of up to 60 days from the date of distribution. The manufacturer must provide reasonable assurance that the protectors will equal or exceed their currently labeled NRR range, and that testing and labeling requirements of this subpart will be satisfied before the extension expires. Requests for extension shall go to the Administrator, U.S. Environmental Protection Agency, Washington, DC 20460. The Administrator will respond to a request within ten (10) business days from receipt of request. Responses may be either written or electronic.

* * * * *

(b) * * *

(1) Testing hearing protectors according to §§ 211–204 through 211–206. The hearing protectors must have been assembled by the manufacturer's normal production process and must have been intended for distribution in commerce.

(2) [Reserved]

(c) Each category of hearing protectors is determined by one or a combination of the following parameters.

Manufacturers may use additional parameters as needed to create and identify additional categories of protectors.

(1) *Ear muffs.*

(i) Head band tension (spring constant);

(ii) Ear cup volume or shape;

(iii) Mounting of ear cup on head band;

(iv) Ear cushion;

(v) Material composition.

(2) *Ear plugs.*

(i) Shape;

(ii) Size;

(iii) Material composition.

(3) *Custom ear plugs.*

(i) Manufacturing Method;

(ii) Acoustic Filter(s);

(iii) Material composition.

(4) *Semi-insert Devices.*

(i) Hand band tension (spring constant);

(ii) Mounding on pod or tip on head band;

(iii) Shape;

- (iv) Size;
- (v) Material composition.
- (5) *Active Noise Reduction Devices*.
- (i) Protector Style;
 - (A) Ear plug;
 - (B) Ear muff.
- (ii) Circuitry;
 - (A) Feed-forward control circuit;
 - (B) Feed-back control circuit;
- (6) *Amplitude-Sensitive Devices*.
- (i) Active design;
 - (A) Level-limiting;
 - (B) Compression circuit;
 - (C) Peak-clipping.
- (ii) Passive design.
 - (A) Nonlinear resistive orifice.
 - (B) Physical control valve.
- (iii) Protector Style.
 - (A) Ear plug.
 - (B) Ear muff.

* * * * *

§ 211.211 [Removed and Reserved]

25. Section 211.211 is removed and reserved.

26. Section 211.211-1 is added to read as follows:

§ 211.211-1 Compliance with labeling requirements.

(a) All hearing protection devices manufactured after the effective date of this regulation, and meeting the applicability requirements of § 211.201, must be labeled according to this subpart, and must comply with the range of Noise Reduction Ratings as determined by the appropriate test procedure as specified in § 211.204 through 211.206 of this subpart.

(b) A manufacturer must take into account both product variability and test-to-test variability when labeling his devices in order to meet the requirements of paragraph (a) of this section. A specific category is considered when the attenuation value at the tested one-third octave band is equal to or greater than the Labeled Value, or mean attenuation value, stated in the supporting information required by § 211.204-4, for that tested frequency. The attenuation value must be determined according to the test procedures of § 211.206. The range of Noise Reduction Ratings for the label must be calculated using the mean attenuation that will be included in the supporting information required by § 211.204-4.

27. Section 211.211-2 is added to read as follows:

§ 211.211-2 Transition testing and labeling requirements.

All hearing protection devices manufactured on or after the effective date of this subpart, and meeting the applicability requirements of § 211.201,

must be tested with the appropriate procedure specified in § 211.206 and labeled as specified in § 211.204.

Manufacturers shall complete testing and labeling of all categories within thirty (30) months from the effective date of subpart B.

28. Section 211.211-3 is added to read as follows:

§ 211.211-3 Recurrent testing requirements.

All hearing protection devices manufactured after the effective date of this subpart, and meeting the applicability requirements of § 211.201, must be retested periodically, following their initial transition testing and labeling pursuant to § 211.210-2. Manufacturers shall retest their products every five (5) years commencing from the date of a categories transition test.

29. Section 211.211-4 is added to read as follows:

§ 211.211-4 Product change retesting requirement.

(a) Any product that meets the applicability requirements of § 211.201, must be retested prior to entry into commerce if the manufacturer alters the product design, product materials, manufacturing process or takes any action that may alter the noise reduction performance of the product from its previous test state. In the event the NRR values (lesser and/or greater) are a minimum of 3 dB less than the current labeled NRR values, the manufacturer must relabel as specified in § 211.211-3.

(b) The recurrent testing of such product shall commence in accordance with the appropriate schedule in § 211.211-3.

30. Section 211.212-1 is amended as follows:

- a. Revise paragraph (a).
- b. Revise paragraph (b).
- c. Revise paragraphs (e)(2) and (e)(3).
- d. Revise paragraph (f).

§ 211.212-1 Test request.

(a) The Administrator will request all compliance audit testing under this section by means of a written request addressed to the manufacturer listed on the product label. The test request will be signed by the Assistant Administrator for Enforcement or his designee.

(b) The test request will be delivered by an EPA Enforcement Officer or sent by certified mail to the plant manager or other responsible official as designated by the listed manufacturer.

* * * * *

- (e) * * *

(2) The manufacturer must complete the required testing within ten (10) business days following commencement of the testing.

(3) The manufacturer will be allowed five (5) business days to send test hearing protectors from the assembly plant to the testing facility. The Administrator may approve more time based upon a request by the manufacturer. The request must be accompanied by a satisfactory justification.

(f) Failure to comply with any of the requirements of this section will not be considered a violation of these regulations if conditions and circumstances outside the control of the manufacturer render it impossible for him to comply.

* * * * *

31. Section 211.212-5 is amended by revising paragraph (a)(1) and removing paragraph (c).

The revision reads as follows:

§ 211.212-5 Reporting test results.

(a)(1) The manufacturer must submit in electronic format within five (5) business days of completion of testing, to the Administrator or his designated enforcement representative, a copy of the Compliance Audit Test report for all testing conducted under § 211.212. A suggested compliance audit test report form is included as Appendix B of this part.

* * * * *

32. Section 211.212-6 is amended by revising paragraph (a)(2) to read as follows:

§ 211.212-6 Determination of compliance.

(a) * * *

(2) The Noise Reduction Rating values (lesser and/or greater), as determined by Compliance Audit Test, are equal to or greater than the Noise Reduction Rating values as stated on the label required by § 211.204.

* * * * *

33. Section 211.213 is revised to read as follows:

§ 211.213 Incorporation by Reference.

The American National Standards Institute/Acoustical Society of America standards are incorporated by reference into subpart B with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the Federal Register. They are available for inspection at the HQ Air Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, and 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.

(a) The following materials are available for purchase from: Acoustical Society of America, Standards Secretariat, 35 Pinelawn Road, Suite 114E, Melville, New York 11747. Phone: (631) 390-0215; e-mail: asastds@aip.org; and Web: <http://asastore.aip.org>.

(1) ANSI/ASA S12.6-2008, "Methods for Measuring the Real-Ear Attenuation of Hearing Protectors," incorporated by reference (IBR) approved for § 211.206-1(b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6)(i)(A)(B)(C)(D)(E)(F), (6)(ii), (6)(iii), (7)(i), (7)(ii), (8)(i)(A)(B), (8)(ii)(A)(B)(C)(D)(E)(F)(G)(H), (8)(iii)(A)(B), and (9).

(2) ANSI S12.42-1995 (R2002), "Microphone-in-Real-Ear and Acoustic Test Fixture Methods for the Measurement of Insertion Loss of Circumaural Hearing Protection Devices," IBR approved for §§ 211.206-2(a), (c)(1), (c)(2), (d)(1), (d)(2), (e)(1),

(e)(2), (e)(3), (g)(2), and 211.206-3(c)(1)(i).

(3) ANSI/ASA S12.68-2007, "Methods of Estimating Effective A-weighted Sound Pressure Levels When Hearing Protectors are Worn," IBR approved for § 211.206-2(l)(3) and §§ 211.207-1(a), and 211.207-2(a), (b), and 211.207-3(a)(b).

(4) ANSI S1.11-2004, "Specification for Octave-Band and Fractional-Octave-Band Analog and Digital Filters" incorporated by reference (IBR) approved for § 211.206-1(b)(4).

(b) The following material is available for purchase from: American National Standards Institute, Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, New York 10036. Phone: (212) 642-4980; e-mail: info@ansi.org; and web: <http://webstore.ansi.org>.

(1) International Electrotechnical Commission (IEC) standard 60711, Occluded-ear simulator for the measurement of earphones coupled to the ear by ear inserts," incorporated by reference (IBR) approved for §§ 211.206-1(k)(1)(ii) and 211.206-1(c)(1)(iii).

(2) [Reserved]

Appendix A to Part 211 [Redesignated as Appendix B to Part 211]

34. Appendix A is redesignated as Appendix B to Part 211 and a new Appendix A is added to read as follows:

Appendix A to Part 211—Reporting Requirements—Attenuation Test Results and Label Verification

1. Date of Report.
2. Manufacturer's Name.
3. Manufacturer's Address.
4. Name of original equipment manufacturer (OEM), if different from above.
5. OEM address if different from above.
6. Name and position of responsible individual for manufacturer.
7. Product country of origin if other than U.S.
8. Product Name.
9. Product Model.
10. Date of Manufacture.
11. Date of last test.
12. Name of Testing Laboratory.

This coversheet must be accompanied by the authorized attenuation test measurements and calculated NRR values obtained from the testing laboratory for each product of product category.

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Federal Register

**Wednesday,
August 5, 2009**

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 618

**Trade Adjustment Assistance; Merit
Staffing of State Administration and
Allocation of Training Funds to States;
Proposed Rule**

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 618**

RIN 1205-AB56

**Trade Adjustment Assistance; Merit
Staffing of State Administration and
Allocation of Training Funds to States;
Proposed Rule**AGENCY: Employment and Training
Administration, Labor.ACTION: Proposed Rule; request for
comment.

SUMMARY: On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, commonly called the Recovery Act, which reauthorized and significantly amended the Trade Adjustment Assistance for Workers (TAA) program under the Trade Act of 1974, as amended (Trade Act). In accordance with those amendments, the Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to propose regulations addressing how the Department distributes TAA training funds to the States that administer the program as agents of the United States. The notice also proposes that personnel engaged in TAA-funded functions undertaken to carry out the worker adjustment assistance provisions must be State employees covered by the merit system of personnel administration applicable to personnel engaged in employment security administration.

DATES: Interested persons are invited to submit comments on this proposed rule. To ensure consideration, comments must be received on or before October 5, 2009. The Department will not consider any comments received after the above date.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB56, by any one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

- *Mail and hand delivery/courier:* Written comments, disk, and CD-ROM submissions may be mailed to Thomas M. Dowd, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5641, Washington, DC 20210.

Instructions: Label all submissions with RIN 1205-AB56.

Please submit your comment by only one method. Please be advised that the Department will post all comments received on <http://www.regulations.gov> without making any change to the comments, or redacting any information. The <http://www.regulations.gov> Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters safeguard any personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses included in their comments as such information may become easily available to the public via the <http://www.regulations.gov> Web site. It is the responsibility of the commenter to safeguard any such personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on <http://www.regulations.gov>.

Docket: All comments on this proposed rule will be available on the <http://www.regulations.gov> Web site and can be found using RIN 1205-AB56. The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and electronic file on computer disk. The Department will consider providing the rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternative format, contact the Office of Policy Development and Research at (202) 693-3700 (this is not a toll-free number). You may also contact this office at the address listed above.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5641, Washington, DC 20210; telephone (202) 693-3700 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The preamble to this proposed rule is organized as follows:

- I. Background—provides a brief description of the development of the proposed rule.
- II. Rationale for the Proposed Rule—summarizes the reasons for the proposed rule.
- III. Section-by-Section Review of the Proposed Rule—summarizes and discusses the provisions of the proposed regulations.
- IV. Administrative Information—sets forth the applicable regulatory requirements.

I. Background

The TAA program, under chapter 2 of title II of the Trade Act, provides adjustment assistance (including training, case management and reemployment services, income support, job search and relocation allowances, a wage supplement option for older workers, and eligibility for a health coverage tax credit) for workers whose jobs have been adversely affected by international trade. There are two steps for workers to obtain program benefits. A group of workers, or specified entities, must file, with the Department and the State in which the jobs are located, a petition for certification of eligibility to apply for TAA benefits and services. (The States administer the TAA program as agents of the United States. They do so through a State agency designated as the Cooperating State Agency (CSA) in an agreement between the Secretary of Labor (Secretary) and the Governor (the Governor-Secretary agreement), as required under section 239 of the Trade Act. The CSA may also include the State Workforce Agency (if different) and other State or local agencies that cooperate in the administration of the TAA program, as provided in the Governor-Secretary agreement. If the Department certifies the petition, based upon statutory criteria that test whether the group of workers was adversely affected by international trade, then the workers may individually apply with the CSA for TAA benefits and services.

The Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA), a part of the Recovery Act (Pub. L. 111-5, Div. B, Title I, Subtitle I), reauthorized and substantially amended the TAA program by amending the certification criteria to expand the types of workers who may be certified and by expanding the available program benefits. Section 1893 of the TGAAA provides that, for the most part, the TGAAA amendments will expire on December 31, 2010. The TGAAA amendments generally apply to workers covered under petitions for

certification filed on or after May 18, 2009, and before January 1, 2011. To incorporate into regulations the substantial changes to the TAA program, the Department proposes creating a new 20 CFR part 618, which will implement the entirety of the TAA program, including the changes made by the TGAAA amendments.

This will be done through two rulemakings. This first rulemaking addresses the allocation of TAA training funds to the States and merit staffing of State administration of the program. (The TGAAA uses the term “apportion” when discussing the dividing of training funds among the States, but this proposed rule uses the term “allocation” to avoid confusion, since customarily the Office of Management and Budget “apportions” appropriated funds to the Department, which “allocates” them to the States.) The Department plans a second rulemaking that will implement the remainder of the TAA program.

The Department published two Notices of Proposed Rulemaking (NPRMs) in 2006 that were part of a rulemaking process to implement the amendments made by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210). The Department first published a NPRM covering TAA program benefits and administration (71 FR 50760, Aug. 25, 2006), and soon thereafter published a NPRM covering the Alternative Trade Adjustment Assistance for Older Workers (ATAA) program (71 FR 61618, Oct. 18, 2006). Then, Congress, in the Continuing Appropriations Resolution, 2007 (Pub. L. 110–5), the Consolidated Appropriations Act, 2008 (Pub. L. 110–161), and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8), explicitly prohibited the Department from finalizing or implementing these proposed regulations until the Trade Act was reauthorized. However, the substantial amendments made by the TGAAA rendered the two 2006 NPRMs obsolete, and therefore the Department withdrew them on June 9, 2009 (74 FR 27262).

II. Rationale for the Proposed Rule

Merit Staffing

This rulemaking proposes that a State must, after a transition period, engage only State government personnel to perform TAA-funded functions undertaken to carry out the worker adjustment assistance provisions of the Trade Act and must apply to such personnel the standards for a merit system of personnel administration, in accordance with Office of Personnel

Management (OPM) regulations at 5 CFR Part 900, Subpart F. These OPM regulations specify the merit system standards required for certain Federal grant programs, and have long been required for personnel administering Unemployment Insurance (UI) (section 303(a)(1) of the Social Security Act) and Wagner-Peyser Act-funded Employment Service (ES) programs in the States (20 CFR 652.215). Under this proposed rule, TAA-funded personnel would be subject to the same State merit system requirements applicable to personnel administering the UI and ES programs in a State. The purpose of this proposed requirement is to promote consistency, efficiency, accountability, and transparency in the administration of the TAA program.

The merit system standards contained in 5 CFR 900.603 are as follows:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This “fair treatment” principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

From 1975, when the Department began administering the TAA program, until 2005, the Governor-Secretary agreements required that TAA-funded administrative functions be carried out exclusively by staff subject to these merit system standards. In 2005, the Governor-Secretary agreements were modified to exempt from the merit system standards personnel engaged in the administration of the TAA program, other than those personnel who also were engaged in administering the UI and ES programs. This proposed rule would restore what had been the long-standing practice of using merit staffed personnel to administer the TAA program.

Requiring the use of State merit staff is particularly appropriate given the nature of the TAA program. The TAA program is a complex entitlement program that requires that the States, acting as agents of the United States, make substantive determinations about the services and benefits that are to be provided to workers. Section 239 of the Trade Act specifically provides that the States are agents of the United States in administering TAA, which is distinct from the relationship under other Federally-funded workforce investment programs, such as Title I of the Workforce Investment Act of 1998 (WIA). Under these other programs, there is a grantor-grantee relationship under which the Department allocates funds to the States to perform public purposes, but the States have considerable discretion in how they carry out those purposes. In contrast, the Trade Act establishes a principal-agent relationship, under which the Department directs State program administration.

This principal-agent relationship is established because, unlike participants in WIA-funded workforce investment programs, workers under the TAA program are legally entitled to receive Federally-funded services and benefits if they meet exclusively Federal eligibility criteria. The wide range of benefits and services to which a worker may be entitled under the TAA program, each of which requires a separate determination based on distinct criteria, and are subject to continuing eligibility, includes the payment of income support (trade readjustment allowances (TRA)); the payment of wage supplements under ATAA and reemployment trade adjustment assistance (RTAA); the payment of job search and relocation allowances; and the approval of and enrollment in training and the issuance of waivers of the training requirement as a condition of TRA. The TGAAA added a requirement to provide employment and case management services to eligible TAA-certified workers, underscoring Congress' recognition that the proper provision of these services is essential to ensure that workers receive the full range of benefits and services to which they are entitled. The TGAAA also added the RTAA benefit, enhanced other benefits and services, and expanded group eligibility for the TAA program. These features add complexity and additional challenges to the administration of the TAA program.

The other major State entitlement program overseen by the Department is the UI program, which is administered by State merit staff, as required as a

condition of receipt of UI administrative grants under 42 U.S.C. 503(a)(1). The TAA and UI programs are integrally related. TRA, the Federally funded income support provided under the TAA program, is a UI benefit payable after exhaustion of other forms of UI, and is subject to many of the same or similar requirements and procedures that apply to State UI. Indeed, the TRA weekly benefit amount is based on the State UI weekly benefit amount, and review of all determinations with respect to TAA entitlements (such as training, TRA and job search and relocation) must be conducted in the same manner and to the same extent as UI determinations under State law. The determination of an individual's entitlement to a publicly-funded benefit, such as TRA (a type of unemployment insurance), is an "inherently governmental" function, as defined in Office of Management and Budget (OMB) Circular No. A-76 (Revised) (68 FR 32134, May 29, 2003).

It is imperative that where individual entitlement to services and benefits exists, there be consistency in the application of eligibility criteria and the treatment of workers nationally, and where the TAA program permits variation based upon State law, that there be consistency statewide. The Department believes that statewide consistency is best achieved by administering the TAA program through merit staff who are hired, trained and employed by one or two State agencies under the same merit system (the Governor-Secretary agreements provide that a State must designate a lead agency, though other agencies may assist in the provision of TAA benefits and services) and receive the same guidance and are accountable to the same State agency or agencies. Non-merit staff personnel employed outside of the State agency, often by several different employers that are either local agencies or non-profits, are subject to varying procedures and work rules, as well as different and potentially conflicting obligations to their actual employers, which is more likely to produce an inconsistent application of the eligibility criteria for the various TAA benefits and services.

Similarly, placing administrative responsibility with the merit staffed personnel of one or two State agencies, rather than with personnel from a number of different entities and contractors with differing internal rules and practices, promotes efficiency and makes it easier to hold the State agencies accountable to address or remedy administrative issues that may arise. For example, a State agency is in

a better position than a locally-based administrative structure to detail staff to areas in the State where their services are most needed in response to the layoff events that may trigger TAA eligibility and require services to large numbers of TAA workers. Focusing responsibility on State agencies also makes it easier for the public to know who administers the program and thereby further promotes accountability and transparency.

State personnel serving under a merit system are non-partisan public servants who are directly accountable to government entities. The standards for their performance and their determinations on the use of public funds require that decisions be made in the best interest of the public and of the population to be served. The use of a State merit system is further intended to ensure that the administrative personnel meet objective professional qualifications, provide fair treatment to participants, comply with strict government standards on the use of personal information, and perform in a setting where decisions are made in accordance with high standards of public transparency. The Department believes that these features of a State merit system are appropriate to apply to the statewide administration of the TAA program.

Under the amendments made by TGAAA, for the first time the TAA program will be able to devote its own funds to the provision of employment and case management services. The Department intends to ensure that these and other TAA-funded services are provided in a high quality and in-depth manner. TAA-certified workers currently receive many services, including supportive services and other wrap-around services that are funded and provided under other programs for which TAA-certified workers also qualify. The Department will continue to encourage the provision of services to TAA-certified workers by such other programs in order to supplement TAA-funded services. In fact, the Governor-Secretary agreements require coordination with activities carried out under WIA to help ensure that a comprehensive array of services is available to TAA-certified workers.

The proposed merit staffing requirement would apply only to TAA-funded functions undertaken to carry out the worker adjustment assistance provisions of the Trade Act. Thus, while the merit staffing requirement would apply to the approval of training, it would not extend to training providers. The requirement also would not prohibit a State from outsourcing "non-

inherently governmental" functions ancillary to program administration, such as the provision of information technology support or janitorial services for State TAA staff. Unemployment Insurance Program Letter No. 12-01, *Outsourcing of Unemployment Compensation Administrative Functions* (Dec. 28, 2000), 66 FR 1696 (Jan. 9, 2001), and its Change 1 (Nov. 26, 2007) applies this principle to the outsourcing of State UI activities, and the proposed rule would apply this principle to the outsourcing of State TAA activities.

The authority the Department relies upon in proposing the merit staffing requirement is found in section 239 of the Trade Act and is the same authority under which the Department establishes the requirements of and executes the Governor-Secretary agreements. Section 239 establishes the Department's role as principal in the principal-agent relationship with the States, sets a number of conditions that must be included in the Governor-Secretary agreements and grants the Secretary broad authority to assure the proper and efficient functioning of the TAA program. Section 239(a)(1) provides that the States are agents of the United States in operating the program. The Department has the responsibility to ensure that, as its agents, the States administer the program in the most effective, efficient, consistent and transparent manner possible. For the reasons stated in this section, the Department has concluded that these goals can best be accomplished through the use of State merit staff.

Other provisions in section 239 also provide authority for the Department's proposed rule. Section 239(a)(4) requires the States to "cooperate with the Secretary and with other State and Federal agencies in providing payments and services" under the program, which affords the Secretary authority to ensure that payments and services are administered in a consistent and efficient manner through State merit staff. Section 239(e) requires coordination of employment services between the TAA and WIA programs "on such terms and conditions as are established by the Secretary," which affords the Secretary the authority to establish merit staffing as a requirement for TAA-funded employment and case management services and in the approval of training. Section 239(e) also instructs the Department to consult with the States on how to administer the provisions of sections 235 and 236 of the Trade Act and title I of the WIA. The Department has consulted with and continues to consult with the States on merit staffing of State TAA

administration. Finally, new section 239(i), added by the TGAAA, directs the Secretary to require each cooperating State and cooperating State agency "to implement effective control measures and to effectively oversee the operation and administration" of the TAA program, which the Department again has determined can be best carried out by requiring the use of State merit staff.

To facilitate the implementation of the State merit staffing requirement in an orderly manner, and to assure that the staffing changes proposed in this rule do not disrupt the provision of services to eligible workers, the proposed rule allows for a transition period. The proposed rule requires the use of merit staff to carry out functions other than employment and case management services by July 1, 2010. As explained below in the "Allocation" section of this preamble, the Department intends to issue a final rule on or before February 17, 2010. Thus, the States would have at least four and one-half months to meet this requirement after the promulgation of the final rule. Recognizing that employment and case management services are a newly funded TAA function and that such services may have been provided through arrangements with other programs in the past, the proposed rule provides a longer transition period for merit staffing such services and requires the use of merit staff to carry out those services beginning October 1, 2010.

The proposed rule permits the three States (Michigan, Colorado and Massachusetts) that are currently exempted from ES merit staffing requirements to continue to use non-State and non-merit staff authorized under those exemptions to administer functions under the TAA program, except that TRA must continue to be administered by State merit staff, as currently required under the Governor-Secretary Agreement. The Department proposes this exception because ES staff may administer TAA, which in turn can make it difficult for a State that does not use State merit staff for the ES program to also use State merit staff for the TAA program. This exception will prevent the complications that might arise in those States that are exempted from ES merit staffing requirements if they attempt to require both State merit staff and non-State or non-merit staff to perform similar functions within the same ES agency.

In sum, given the nature of the TAA program as a complex entitlement program administered by the States as agents of the Department, the objectives of ensuring consistency, efficiency, accountability and transparency in the

administration of the program can best be achieved by restoring the requirement that the program be administered by State merit staff. In so doing, the proposed rule advances the ultimate goal of the TAA program to provide effective benefits and services that will help trade-impacted workers obtain reemployment.

Allocation of Training Funds to States

This proposed rule also provides for the Department's allocation of training funds to the States. Section 1828(a) of the TGAAA amended section 236(a)(2) of the Trade Act to increase the annual statutory "cap" on TAA training funds and to set forth the terms under which the Department distributes these funds to the States. Section 1828(c) of the TGAAA added a new section 236(g)(1) to the Trade Act directing the Department to issue "such regulations as may be necessary to carry out the provisions of subsection (a)(2)" on or before February 17, 2010. This NPRM proposes the regulations referred to in section 236(g)(1).

Before the TGAAA, the TAA program was most recently reauthorized in the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107-210), which expanded program coverage and increased the training cap from \$80 million to \$220 million to provide training for the newly covered workers. The TGAAA amendments further increased the cap to \$575 million for each of fiscal years (FY) 2009 and 2010, and provided a cap of \$143,750,000 for the period from October 1 to December 31, 2010. The Conference Report on the Recovery Act, H.R. Rep. No. 111-16, entitled *Making Supplemental Appropriations for Job Preservation and Creation, Infrastructure Investment, Energy Efficiency and Science, Assistance to the Unemployed, and State and Local Fiscal Stabilization, for the Fiscal Year Ending September 30, 2009, and for Other Purposes* (Conference Report), made clear that Congress increased the cap on training funds not only because of the expanded program coverage but also because training funds have at times been insufficient. H.R. Rep. No. 111-16, p. 672.

The process by which training funds are allocated has also evolved over recent years. Before FY 2004, the Department allocated TAA training funds to the States entirely through a request process. States were not provided with any initial annual allocation of funds; instead, all distributions of TAA training funds were made in response to State requests. States would submit requests on an as-

needed basis, but, because the requests typically far outstripped available training funds, the training funds regularly ran out early in the fiscal year. Once the TAA training funds were exhausted, States would request National Emergency Grant (NEG) funds under section 173 of the WIA to enable them to continue to enroll trade-affected workers in approved training. The uncertainty of the funding process made it difficult for the States to anticipate how much funding they would receive, and therefore made it difficult for the States to plan and manage resources. Thus, this process proved to be inefficient, protracted, and cumbersome.

To address these problems, beginning with FY 2004, the Department issued annual guidance establishing a formula for allocating TAA training funds to the States. The Department first issued a specific funding formula for TAA training funds in Training and Employment Guidance Letter (TEGL) No. 6-03 (Oct. 1, 2003), and after a change in the weighting of the factors used in the formula for FY 2005, the formula remained the same through the beginning of FY 2009. The Department's formula-based methodology for State TAA funding initially allocated 75 percent of the Department's appropriation of a fiscal year's training funds and held the remaining 25 percent in reserve. The reserve funds could be accessed by States that had expended at least 50 percent of their allocation, or otherwise demonstrated need. Each year, a TEGL described the formula for allocating the 75 percent initial distribution (\$165 million) among the States. After FY 2005, the formula did not change from year to year, and the Department issued a TEGL each year as a reminder to the States and to indicate that the formula for that fiscal year would use data from the more current time periods. The TEGL on this topic for FY 2009 was TEGL No. 4-08 (Oct. 28, 2008).

Under the old formula, the Department allocated one-half of the funds based on accrued training expenditures, as reflected in the previous 2½ years' reported data, and allocated the other one-half based on the average number of training participants for the same reporting period. The Department calculated a State's percentage of total training expenditures by taking the State's average total expenditures over the previous 2½ years and dividing that number by the average national training expenditures during the same time period. Each State was assigned a weight representing each State's share of the national TAA activity. The weight was used to

determine a State's unadjusted base allocation for a fiscal year. This weight was calculated by using each of two factors as half of the total for the final weight each State receives. A State's unadjusted base allocation for a fiscal year was calculated by multiplying the State's weight against the training funds being allocated. Therefore, if a State represented 10 percent of the national participation and expenditures, the State weight would be 10 percent and the State would receive 10 percent of the \$165 million as an unadjusted base allocation. If a State had an allocation of less than \$100,000, the funds allocated for it were redistributed to the other States, and that State had to apply for reserve funding as needed.

The formula included a hold harmless feature, under which the initial allocation to a State was held to at least 85 percent of the amount the State received in its initial allocation for the prior fiscal year. TEGL No 6-03 introduced the hold harmless feature with the creation of the formula in order to minimize fluctuations in State funding from year to year which, as explained above, made it hard for States to plan and manage resources. Although the hold harmless feature was an attempt to ensure funding stability while States were becoming accustomed to the new methodology, it has proven to be problematic. In some instances, States have had atypically large layoffs one year, leading to high TAA training activity and expenditures that year and high initial allocations in the following fiscal year. Then, if a State's TAA activity decreased considerably the following fiscal year, the 85 percent hold harmless provision prevented the formula from properly adjusting the amount of funding needed by the State. Because these States were allocated more than they needed, other States could receive inadequate initial training allocations that they exhausted relatively early each fiscal year. The Trade Act, as amended by the TGAAA, still includes a hold harmless provision, but at a much lower level of 25 percent of the prior year's allocation, thus addressing the problem just described. Once the funds to make up the hold harmless amount are distributed, and the amounts from those States whose allocations were less than \$100,000 are added back to the remaining pool of funds, the remaining funds are allocated among those States whose unadjusted allocation was at or above the hold harmless amount using the same formula.

The Department has very limited authority to move money between States once the funds are distributed. The

Department is allowed to reclaim unexpended training funds from a State, with the State's agreement, and to redistribute those funds to other States only within a current fiscal year. This means that if a State is allocated FY 2009 training funds, those funds may be returned to the Department and provided to another State only during FY 2009. After the end of the fiscal year, the Department has no authority to redistribute any unused funds received from a State. Training funds are available for State expenditure in the fiscal year in which they are obligated and in the two following fiscal years, per section 245(b) of the Trade Act. Training funds that are not expended by the end of the third fiscal year must be returned to the U.S. Treasury, as required by section 241(b) of the Trade Act.

The TGAAA prescribes a process for allocating training funds. Although the process described in the statute is similar in many respects to the process just described, it will require some significant changes to the Department's methodology.

The Omnibus Appropriations Act, 2009 (Pub. L. 111-8) provided increased TAA funding which will be used for a FY 2009 supplemental distribution to the States and other purposes. The Department issued a Change 1 to TEGL No. 04-08 to explain the formula methodology used to develop this supplemental distribution and describe the process for States to request additional TAA program reserve funds for training.

Section 236(a)(2)(B)-(E) of the Trade Act, as amended by the TGAAA, now establishes a methodology for distributing TAA training funds:

(B)(i) The Secretary shall, as soon as practicable after the beginning of each fiscal year, make an initial distribution of the funds made available to carry out this section, in accordance with the requirements of subparagraph (C).

(ii) The Secretary shall ensure that not less than 90 percent of the funds made available to carry out this section for a fiscal year are distributed to the States by not later than July 15 of that fiscal year.

(C)(i) In making the initial distribution of funds pursuant to subparagraph (B)(i) for a fiscal year, the Secretary shall hold in reserve 35 percent of the funds made available to carry out this section for that fiscal year for additional distributions during the remainder of the fiscal year.

(ii) Subject to clause (iii), in determining how to apportion the initial distribution of funds pursuant to subparagraph (B)(i) in a fiscal year, the Secretary shall take into account, with respect to each State—

(I) The trend in the number of workers covered by certifications of eligibility under this chapter during the most recent 4

consecutive calendar quarters for which data are available;

(II) The trend in the number of workers participating in training under this section during the most recent 4 consecutive calendar quarters for which data are available;

(III) The number of workers estimated to be participating in training under this section during the fiscal year;

(IV) The amount of funding estimated to be necessary to provide training approved under this section to such workers during the fiscal year; and

(V) Such other factors as the Secretary considers appropriate relating to the provision of training under this section.

(iii) In no case may the amount of the initial distribution to a State pursuant to subparagraph (B)(i) in a fiscal year be less than 25 percent of the initial distribution to the State in the preceding fiscal year.

(D) The Secretary shall establish procedures for the distribution of the funds that remain available for the fiscal year after the initial distribution required under subparagraph (B)(i). Such procedures may include the distribution of funds pursuant to requests submitted by States in need of such funds.

(E) If, during a fiscal year, the Secretary estimates that the amount of funds necessary to pay the costs of training approved under this section will exceed the dollar amount limitation specified in subparagraph (A), the Secretary shall decide how the amount of funds made available to carry out this section that have not been distributed at the time of the estimate will be apportioned among the States for the remainder of the fiscal year.

Thus, the amended Trade Act requires the Secretary to make an initial distribution of training funds equal to 65 percent of the training cap, holding 35 percent in reserve to be distributed to States on an as-needed basis. Section 236(a)(2)(C)(ii) establishes four factors that the Secretary must take into account in allocating this initial distribution. These factors are: (1) The trend in the number of workers covered by certifications of eligibility during the most recent four consecutive calendar quarters for which data is available; (2) the trend in the number of workers participating in training during the most recent four consecutive calendar quarters for which data is available; (3) the number of workers estimated to be participating in TAA-approved training during the fiscal year; and (4) the amount of funding estimated to be necessary to provide approved training during the fiscal year. Section 236(a)(2)(C)(ii) also permits the Secretary to use "such other factors as the Secretary considers appropriate relating to the provision of approved training." The Department has decided not to propose any new factors at this time but will revisit this issue in the future as it gains experience operating

the new formula. The proposed rule authorizes the Department to add factors at its discretion through administrative guidance published for comment.

The Department proposes to assign each of these factors an equal weight, but the proposed rule authorizes the Department to change the weights through administrative guidance published for comment. As under the old formula, the Department will determine the national total and each State's percentage of the national total for each factor. Using each State's percentage of each of these weighted factors, the Department will determine the unadjusted percentage that the State will receive of the amount available for base allocations. The percentages for all the States will total 100 percent of \$373,750,000, which is 65 percent of the training cap.

The Department does not yet have experience using several of the statutory factors in the funding formula. Similarly, the Department cannot accurately predict how the TGAAA's expansion of program coverage to include workers in service industries and workers in firms producing component parts will have on the data that States provide, nor for the impact on their funding needs. Because the Department has little experience working with these four factors in the new funding formula, the Department has determined that, for the time being, it is best to weight each factor equally. The Department proposes to administer the program with equally weighted factors until the TGAAA amendments sunset on December 31, 2010 under section 1893 of the TGAAA. The Department believes that by the sunset of the TGAAA amendments, it will have had enough experience using the new funding formula to determine whether it is appropriate to change the weights of the existing four factors or to add factors. Any change to the weights of the four statutory factors or additions of factors will be made through administrative guidance published for comment.

The Trade Act, as amended by the TGAAA, includes a hold harmless feature, but at a much lower level than the Department has been using. While the initial allocation to a State has been at least 85 percent of the amount the State received in its initial distribution in the prior fiscal year, the statute now requires that a State's initial allocation be at least 25 percent of the amount the State received in its initial allocation for the prior fiscal year. Considering the challenges with the 85 percent hold harmless feature noted earlier, the Department proposes to limit the hold

harmless feature to the minimum statutory level of 25 percent.

It has been the Department's practice that, if a State's initial allocation is less than \$100,000, that State's allocation is reapportioned to the other States. If a State has an initial allocation of less than \$100,000, it may request reserve funds in order to obtain the limited TAA funding that the State requires. The proposed rule continues this practice, because it imposes no hardship. The Department is able to quickly process the relatively small requests for reserve funds made by these States.

The proposed rule provides that, after the unadjusted allocations are calculated, the allocations to States whose unadjusted allocations were less than their hold harmless amounts are adjusted to their hold harmless amount. The funds used for that adjustment are subtracted from the total funds available for distribution. Next, the funds that become available from those States whose unadjusted allocation is less than \$100,000 are added back into the total funds available. The amount remaining after those subtractions and additions is distributed among the remaining States, the States whose unadjusted allocations were as much or more than their hold harmless amounts using the same formula to recalculate the allocations.

One alternative to the \$100,000 threshold would be to provide each State a minimum initial allocation. For example, the Department could allocate to each State its hold harmless amount without applying a \$100,000 threshold, and then subtract the sum total of those hold harmless amounts from the remaining initial allocation funds before running the calculations outlined above for those remaining funds. This would reduce the amount that is allocated proportionately according to State need while ensuring a few States would receive initial allocations that otherwise would not. Another alternative would be to set a certain minimum initial allocation, which would be the same dollar amount for all States, then increase to their hold harmless amounts the States whose hold harmless amounts are higher than the fixed minimum amount. The remaining initial allocation monies then would be allocated by formula. The Department welcomes public comments on its proposal and the suggested alternatives and any other alternatives commenters wish to suggest.

The amended Trade Act establishes the reserve level of funds at 35 percent of the total appropriated to the program, a higher level than the Department's previous 25 percent reserve. These

funds will be held in reserve, as they have in the past, to be distributed to States on an as-needed basis and are designed to provide funding to those States that experience high activity levels that cannot be addressed with the funds received in the initial allocation.

The amended Trade Act requires the Department to make the initial distribution to States "as soon as practicable after the beginning of each fiscal year," and requires that 90 percent of a fiscal year's training funds be distributed to the States by July 15 of that fiscal year. In order for the Department to meet the July 15 deadline, we propose to address any reserve requests received before June 1, and after all reserve requests are satisfied, to distribute the remaining training funds using the same process used for initial allocations. Any requests for reserve funds received after June 1 will be funded from the remaining (10 percent) reserve funds.

In accordance with section 235A of the Trade Act, the Department will also provide an additional 15 percent of the amount allocated for training for TAA administration and employment and case management services, as well as an additional \$350,000 to each State specifically for employment and case management services.

III. Section-by-Section Review of the Proposed Rule

Subpart H—Administration by Applicable State Agencies

Merit Staffing (§ 618.890)

Paragraph (a) of proposed § 618.890 requires that a State apply to personnel engaged in TAA-funded functions undertaken to carry out the worker adjustment assistance provisions of the Trade Act the merit system of personnel administration applicable to personnel covered under 5 CFR part 900, subpart F, which applies to, among other agencies, State UI and ES agencies.

The Department recognizes that this requirement must be implemented in such a way as to minimize any disruption in services to trade-impacted workers. Accordingly, rather than an immediate conversion to merit staffing, proposed paragraphs (b)(1) and (b)(2) provide a transition period for States to transition to the merit system.

Proposed paragraph (b)(1) requires that activities related to employment and case management services be administered by merit-staffed State personnel no later than October 1, 2010. Proposed paragraph (b)(2) requires that the other TAA activities be administered by merit-staffed State personnel by July 1, 2010.

Paragraph (c) of proposed § 618.890 provides an exemption from the merit staffing requirement for the three States the Secretary has exempted from the ES merit staffing requirement: Colorado, Massachusetts, and Michigan. The exemption is, however, limited. The exemption would not apply to the State's administration of TRA, which would remain subject to the merit staffing requirement. Further, to the extent that these States provide TAA-funded services using staff of a State agency other than the ES, the ES exemption would not apply, and staff of these agencies would have to be merit staffed.

Proposed paragraph (d) provides that the requirements of paragraph (a) do not prohibit a State from outsourcing functions that are not inherently governmental, as defined in OMB Circular No. A-76 (Revised).

Subpart I—Allocation of Training Funds to States

Annual Training Cap (§ 618.900)

Proposed § 618.900 implements section 236(a)(2)(A) of the Trade Act which caps the amount of TAA training funds available in each fiscal year.

Proposed paragraph (a) states that training funds for fiscal years 2009 and 2010 are limited to \$575 million annually. Proposed paragraph (b) states training funds for the period between October 1 and December 31, 2010 will not exceed \$143.75 million.

Distribution of the Initial Allocation of Training Funds (§ 618.910)

Proposed § 618.910 implements the initial distribution of TAA training funds requirements in section 236(a)(2)(B) and section 236(a)(C)(ii) of the Trade Act.

Proposed paragraph (a) provides that the initial allocation of training funds to the States will be 65 percent of the available training funds for a given fiscal year, as required by section 236(a)(2)(C)(i) of the Trade Act.

Proposed paragraph (b) provides that the Department will make an initial allocation of training funds to the States as soon as is practicable after the beginning of each fiscal year. The Department often does not have full budget authority at the beginning of each fiscal year and often operates under a continuing resolution for some period during the fiscal year. As a result, proposed paragraph (b) also provides that the full initial allocation for a State may not be available at the beginning of a particular fiscal year. The Department will announce the States' full initial allocation at the beginning of

each fiscal year based on the applicable training cap, but the Department will not be able to distribute the full amount of the initial allocation until it receives a full year's appropriation. Finally, proposed paragraph (b) provides that should the full year's appropriated amount of training funds be less than the training cap, then the initial allocation will be based on the amount appropriated.

Proposed paragraph (c) implements the hold harmless provision, required by section 236(a)(2)(C)(iii) of the Trade Act. Congress set the TGAAA's hold harmless provision to require that a State receive no less than 25 percent of its previous fiscal year's initial allocation. This is lower than the Department's practice of using a hold harmless percentage of at least 85 percent. Congress wanted the allocation of these funds to be more responsive to economic conditions, which can change rapidly, even within a single fiscal year (H.R. Rep. No. 111-16, pp. 672-73). Although intended to help States better plan their training needs, the Department's higher hold harmless percentage led to inequitable distributions of training funds. The lower hold harmless percentage will allow the Department to more nimbly respond to the changing economic needs among the States. Proposed paragraph (c) proposes a hold harmless percentage of the statutory minimum, that is, 25 percent, except as provided in proposed paragraph (d) of proposed § 618.910, for States with very limited or no TAA needs.

Proposed paragraph (d) provides that a State whose unadjusted initial allocation is less than \$100,000 will not receive an initial allocation, and its initial allocation amount will be allocated instead to other States. A State that does not receive an initial distribution may apply for reserve funds to obtain the training funding that it requires. Reserve funds will be distributed in accordance with proposed § 618.920(b). Proposed paragraph (d) reflects the Department's practice, and is based on a determination that TAA training fund use of less than \$100,000 in any fiscal year represents only sporadic TAA activity within a State; it is best to serve States that need relatively small amounts of training funds with a reserve funding request.

Proposed paragraph (e) explains the process through which the initial allocation of training funds is made. In order for the Department to distribute the initial allocation properly it must factor in the hold harmless provision (proposed § 618.910(c)), the \$100,000 threshold (proposed § 618.910(d)), and

the initial allocation factors (proposed § 618.910(f)).

Proposed paragraph (e)(1) provides that the Department begins the process of determining each State's initial allocation by applying the four factors in proposed § 618.910(f), as required by section 236(a)(2)(C)(ii) of the Trade Act. Applying these factors results an unadjusted initial allocation for each State.

Proposed paragraph (e)(2) provides that the Department then applies to the unadjusted initial allocation the hold harmless provision of proposed § 618.910(c). Proposed paragraph (e)(2)(i) provides that a State whose unadjusted allocation is less than its hold harmless amount, but is \$100,000 or more, will have its allocation adjusted upward to meet the hold harmless amount (25 percent of its last year's allocation). If a State's unadjusted allocation is less than \$100,000, the State will receive no initial allocation. Those funds will be shared among other States. (States that receive no initial allocation may apply for reserve funds.)

Proposed paragraph (e)(2)(ii) provides that a State whose unadjusted allocation is no less than its hold harmless amount will receive its hold harmless amount and a recalculated share of remaining initial allocation funds.

Proposed paragraph (e)(3) provides that the initial allocation funds remaining after the adjusted initial allocations are made to those States receiving only their hold harmless amounts, will be distributed among the States with unadjusted initial allocation that were no less than their hold harmless amounts. The Department reallocates the remaining funds by applying the factors listed in proposed § 618.910(f) and by repeating the calculations in proposed paragraphs (c)-(e).

Proposed paragraph (f)(1) describes the four factors that the Department will use in determining the amount of the initial distribution to the States. The Trade Act requires the consideration of these four factors.

Proposed paragraphs (f)(1)(i) through (iv) list the four factors. Proposed paragraph (f)(1)(i) identifies as the first factor the trend in the number of workers covered by certifications of eligibility during the most recent four consecutive calendar quarters for which data is available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor. The Department, under TEGL No. 04-08, Change 1, assigns weights of 40 percent for the most recent quarter, 30 percent to the next most recent quarter, 20

percent to the third most recent quarter, and 10 percent to the oldest quarter. The Department proposes not to codify these weights in regulation because it needs flexibility to change these weights quickly as the Department gains experience.

Proposed paragraph (f)(1)(ii) identifies as the second factor the trend in the number of workers participating in training during the most recent four consecutive calendar quarters for which data is available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor. The Department currently assigns weights by quarter for this factor in the same percentages as it does for the first factor.

Proposed paragraph (f)(1)(iii) identifies as the third factor the number of workers estimated to be participating in training during the fiscal year. This estimate will be calculated by dividing the weighted average number of training participants for the State determined in proposed paragraph (f)(1)(ii) by the sum of the weighted averages for all States and multiplying the resulting ratio by the projected national average of training participants for the fiscal year, using the estimates underlying the Department's most recent budget submission or update.

Proposed paragraph (f)(1)(iv) identifies as the fourth factor the amount of funding estimated to be necessary to provide approved training during the fiscal year. This estimate will be calculated by multiplying the estimated number of participants in proposed paragraph (f)(1)(iii) by the average training cost for the State. The average training cost will be calculated by dividing total training expenditures for the most recent four quarters by the average number of training participants for the same time period.

Proposed paragraph (f)(2) provides that the Department may use such other factors as it considers appropriate related to the provision of training. At this time the Department does not propose to consider any additional factors other than those listed in § 618.910(f)(1)(i)–(iv). We invite the public to suggest additional factors and reasons for using them. The Department proposes to reserve the right to add additional factors in the future as described in paragraph (f)(4).

Proposed paragraph (f)(3) provides that the Department will assign an equal weight to each of the four factors listed in proposed § 618.910(f)(1). For each of these weighted factors, the Department will determine the national total and each State's percentage of the national total. Based on a State's percentage of

each of these weighted factors, the Department will determine the percentage that the State will receive of the amount available for unadjusted allocations. The percentages for all States will total 100 percent of the initial allocation of funds, 65 percent of the total training funds for a fiscal year.

Proposed paragraph (f)(4) provides the mechanism by which the Department will change the weights of the factors or add new factors to the funding formula. As the Department gains experience with the effects of the equally weighted four factors and with the effects of the TGAAA amendments on the patterns of fund use, it will be able to determine whether any adjustments to the formula are necessary. At that time, the Department may change the weights of the four factors or suggest additional factors to better serve the trade-impacted work force. Any changes will be made through administrative guidance published for comment.

Reserve Fund Distribution (§ 618.920)

Proposed § 618.920 addresses the distribution of the funds that remain after the initial distribution to the States, that is, the reserve funds.

Proposed paragraph (a) provides that the remaining 35 percent of the total annual training funds would be held in reserve for later distribution, as required by section 236(a)(2)(C)(i) of the Trade Act. The statute specifically provides that the procedures the Secretary is required to establish for the distribution of the funds held in reserve may include the distribution of such funds in response to requests made by States in need of additional training funds. Reserve funds are distributed to the States on an as-needed basis and are designed to provide funds to those States that experience large, unexpected layoffs that did not receive an initial allocation or otherwise have training needs that are not met by their initial allocation. Proposed paragraph (a) also provides that reserve funds are not available for administrative expenses or for employment and case management services. Rather, the Department will provide States an additional 15 percent of the amount provided for TAA training for administration and employment and case management services.

Proposed paragraph (b) provides the conditions under which reserve funds will be allocated. These conditions are: First, that a State must demonstrate either that at least 50 percent of its training funds has been expended, or that it needs more funds to meet unusual and unexpected events; and second, that the State must provide a

documented estimate of its expected funding needs for the remainder of the fiscal year.

Proposed paragraphs (b)(1) through (b)(3) set forth the minimum information that a State must include in its analysis of its remaining fiscal year funding needs. The Department requires this information in order to determine whether there is a real need for funding. The analysis must include the average cost of training in the State; the expected number of participants in training through the end of the fiscal year; and the remaining funds the State has available for training. Standard Form (SF) 424 (OMB Approval No. 4040-0004, expires March 31, 2012), Application for Federal Assistance, will continue to serve as the initial request for reserve funding, and must be sent to the appropriate regional office. The ETA 9117 (OMB Approval No. 1205-0275, expires January 31, 2010), TAA Program Reserve Funding Request Form, will continue to serve to provide the supporting information needed. Any change to those procedures will be communicated through administration guidance.

Second Distribution (§ 618.930)

Proposed § 618.930 provides that at least 90 percent of the total training funds for a fiscal year will be distributed to the States by July 15 of that fiscal year, as required by section 236(a)(2)(B)(ii) of the Trade Act. In order to meet this threshold the Department will first meet all timely filed acceptable requests for reserve funds. To be timely, the Department must receive a reserve fund request before June 1. (Any reserve fund requests received on or after June 1 will be funded from the funds remaining after the July 15 distribution.) Any funds left over after all acceptable timely requests for reserve funds are satisfied will be distributed to those States which received an amount greater than the hold harmless amount according to the procedures established in proposed § 618.910.

Insufficient Funds (§ 618.940)

Proposed § 618.940 provides that if, in a given fiscal year, the Secretary estimates that the amount of funds necessary to pay for approved training will exceed the legislative cap, and therefore there will be insufficient funds to meet the needs of all States for the year, the Department will decide how the funds remaining in reserve at that time will be allocated among the States, as provided by section 236(a)(2)(E) of the Trade Act. The Department will communicate this decision through administrative notice.

IV. Administrative Information

Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, requires the Department to evaluate the economic impact of this proposed rule with regard to small entities. The RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the rule imposes a significant economic impact on a substantial number of such small entities.

The Department has determined that this NPRM does not affect a substantial number of small entities. As this proposed rule merely describes how the Department will allocate to the States training funds under the Trade Act, the only entities affected are the States. Because the rule does not impact a substantial number of small entities, we need not determine whether its economic impact is significant.

This analysis is also applicable under Executive Order 13272; for those purposes as well the Department certifies that this proposed rule does not impose a significant economic impact on a substantial number of small entities.

The Department has also determined that this rule is not a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended (SBREFA), Public Law 104-121. SBREFA requires agencies to take certain actions when a "major rule" is promulgated. SBREFA defines a "major rule" as one that will have an annual effect on the economy of \$100 million or more; that will result in a major increase in costs or prices for, among other things, State or local government agencies; or that will significantly and adversely affect the business climate.

The proposed rule will also not result in a major increase in costs or prices for States or local government agencies; just the opposite, in fact, as the rule governs the distribution of certain funds to the States. Finally, this proposed rule will not have an annual effect on the economy of \$100 million or more.

Therefore, because none of the definitions of "major rule" apply, in this instance, we determine that this proposed rule is not a "major rule" for SBREFA purposes.

Executive Order 12866

Executive Order 12866 requires that for each "significant regulatory action"

proposed by the Department, the Department conduct an assessment of the proposed regulatory action and provide OMB with the proposed regulation and the requisite assessment prior to publishing the regulation. A significant regulatory action is defined to include an action that will have an annual effect on the economy of \$100 million or more, as well as an action that raises a novel legal or policy issue. As discussed in the SBREFA analysis, this proposed rule will not have an annual effect on the economy of \$100 million or more. However, the rule does raise novel policy issues about the allocation of TAA training funds and State merit staffing. Therefore, the Department has submitted this proposed rule to OMB.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise the collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information. Because this proposed rule does not require the collection of any new information, the PRA is not implicated.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, this NPRM does not include any Federal mandate that may result in increased expenditure by State, local, and Tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. State governments administer TAA as agents of the United States and are provided appropriated Federal funds for all TAA expenses.

Executive Order 13132

Executive Order 13132 at section 6 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

Further, section 239(f) of the Trade Act, upon which the Department relies, in part, for its authority to impose merit staffing, requires consultation with the States in the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of the Trade Act and under title I of the WIA.

Because a merit staffing requirement may fall within Section 3(b), and because of the consultation requirement in section 239(f) of the Trade Act, the Department has consulted on a variety of issues arising from the TGAAA amendments, including merit staffing, with the States both directly and through communication with the National Association of State Workforce Agencies, the National Association of Workforce Boards, and the National Governors Association, during the formation of the Governor-Secretary agreements between the States and the Department. The Department recognizes that there may be some costs to the States that have to convert some of their TAA-related staff to their merit staffing system. These costs will be primarily processing costs to take the steps necessary to establish the positions within the merit system and to hire staff into those positions. The Department does not have data on which to give a reasonable estimate of these costs but the Department is providing funds to the States specifically to cover the costs of these positions.

Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This NPRM addresses TAA training funds and merit staffing, and has no impact on safety or health risks to children.

Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian Tribal governments. The order requires Federal agencies to take certain actions when regulations have "Tribal implications." Required actions include consulting with Tribal governments prior to promulgating a regulation with Tribal implications and preparing a Tribal impact statement. The order defines regulations as having "Tribal implications" when they 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.

Because this NPRM merely addresses how the Department distributes training funds to the States, we conclude that it does not have Tribal implications.

Environmental Impact Assessment

The Department has reviewed this NPRM in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR. part 1500), and the Department's NEPA procedures (29 CFR. part 11). The NPRM will not have a significant impact on the quality of the human environment, and, thus, the Department has not prepared an environmental assessment or an environmental impact statement.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681), requires the Department to assess the impact of this proposed rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this NPRM and determines that it will not have a negative effect on families. Indeed, we believe the proposed rule would strengthen families by providing training funds for workers adversely affected by trade.

Executive Order 12630

This NPRM is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 12988

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The proposed regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Executive Order 13211

This NPRM is not subject to Executive Order 13211, because it will not have a

significant adverse effect on the supply, distribution, or use of energy.

Plain Language

The Department drafted this rule in plain language.

List of Subjects in 20 CFR Part 618

Administrative practice and procedure, Grant programs—Labor, Reporting and recordkeeping requirements, trade adjustment assistance.

For the reasons discussed in the preamble, the Department of Labor proposes to add 20 CFR part 618 to read as follows:

Add part 618, reserving subparts A through G, and add subparts H and I to read as follows:

PART 618—TRADE ADJUSTMENT ASSISTANCE UNDER THE TRADE ACT OF 1974 FOR WORKERS CERTIFIED UNDER PETITIONS FILED AFTER MAY 17, 2009

Subpart A—G [Reserved]

Subpart H—Administration by Applicable State Agencies

Sec.

618.890 Merit staffing.

Subpart I—Apportionment of Training Funds to States

618.900 Annual training cap.

618.910 Distribution of initial allocation of training funds.

618.920 Reserve fund distributions.

618.930 Second distribution.

618.940 Insufficient funds.

Subpart A—G [Reserved]

Subpart H—Administration by Applicable State Agencies

Authority: 19 U.S.C. 2320; Secretary's Order No. 03-2009, 74 FR 2279.

§ 618.890 Merit staffing.

(a) *Merit-based State personnel.* The State must, subject to the transition period in paragraph (b) of this section, engage only State government personnel to perform Trade Adjustment Assistance (TAA)-funded functions undertaken to carry out the worker adjustment assistance provisions of the Trade Act of 1974, as amended, and must apply to such personnel the standards for a merit system of personnel administration applicable to personnel covered under 5 CFR Part 900, subpart F.

(b) *Transition period.* A State not already in compliance with the merit system requirement of paragraph (a) of this section must comply with this requirement with respect to the personnel responsible for:

(1) Employment and case management services under section 235 of the Trade Act by October 1, 2010; and

(2) All other TAA administrative activities, that are required to be merit staffed, by July 1, 2010.

(c) *Exemptions for States with employment service operation exemptions.* A State whose employment service received an exemption from merit staffing requirements from the Secretary of Labor (Secretary) under the Wagner-Peyser Act, will retain an exemption from the requirements of paragraph (a) of this section. The exemption does not apply to the State's administration of trade readjustment allowances which remain subject to the requirements of paragraph (a) of this section. To the extent that a State with an authorized ES exemption provides TAA-funded services using staff not funded under the Wagner-Peyser Act, the exemption in this paragraph does not apply, and they remain subject to the requirements of paragraph (a) of this section.

(d) *Exemptions for non-inherently governmental functions.* The requirements of paragraph (a) of this section do not prohibit a State from outsourcing functions that are not inherently governmental, as defined in Office of Management and Budget Circular No. A-76 (Revised).

Subpart I—Allocation of Training Funds to States

Authority: 19 U.S.C. 2320; 19 U.S.C. 2296(g); Secretary's Order No. 03-2009, 74 FR 2279.

§ 618.900 Annual training cap.

The total amount of payments that may be made for the costs of training will not exceed the cap established under section 236(a)(2)(A) of the Trade Act.

(a) For each of the fiscal years 2009 and 2010, this cap is \$575,000,000; and

(b) For the period beginning October 1, 2010, and ending December 31, 2010, this cap is \$143,750,000.

§ 618.910 Distribution of initial allocation of training funds.

(a) *Initial allocation.* The initial allocation for a fiscal year will total 65 percent of the training funds available for that fiscal year. The Department of Labor (Department) will announce the amount of each State's initial allocation of funds in accordance with the requirements of this section at the beginning of each fiscal year. The Department will determine this initial allocation on the basis of the full amount of the training cap for that year, even if the full amount has not been

appropriated to the Department at that time.

(b) *Timing of the distribution of the initial allocation.* The Department will, as soon as practical after the beginning of each fiscal year, distribute the initial allocation announced under paragraph (a) of this section. However, the Department will not distribute the full amount of the initial allocation until it receives the entire fiscal year's appropriation of training funds. If the full year's appropriated amount of training funds is less than the training cap, then the Department will distribute 65 percent of the amount appropriated.

(c) *Hold harmless provision.* Except as provided in paragraph (d) of this section, in no case will the amount of the initial allocation to a State in a fiscal year be less than 25 percent of the initial allocation to that State in the preceding fiscal year.

(d) *Minimum initial allocation.* If a State has an adjusted initial allocation of less than \$100,000, as calculated in accordance with paragraph (e)(2) of this section, that State will not receive any initial allocation, and the funds that otherwise would have been allocated to that State instead will be allocated among the other States in accordance with this section. A State that does not receive an initial distribution may apply under § 618.920(b) for reserve funds to obtain the training funding that it requires.

(e) *Process of determining initial allocation.* (1) The Department will first apply the factors described in paragraph (f) of this section to determine an unadjusted initial allocation for each State.

(2) The Department will then apply the hold harmless provision of paragraph (c) of this section to the unadjusted initial allocation, as follows:

(i) A State whose unadjusted initial allocation is less than its hold harmless amount but is \$100,000 or more, will have its initial allocation adjusted up to its hold harmless amount. If a State's unadjusted allocation is less than \$100,000, the State will receive no initial allocation, in accordance with paragraph (d) of this section. Those funds will be shared among other States as provided in paragraph (e)(3) of this section.

(ii) A State whose unadjusted initial allocation is no less than its hold harmless threshold will receive its hold harmless amount and will also receive an adjustment equal to the State's share of the remaining initial allocation funds, as provided in paragraph (e)(3) of this section.

(3) The initial allocation funds remaining after the adjusted initial

allocations are made to those States receiving only their hold harmless amounts, as described in paragraph (e)(2)(i) of this section, will be distributed among the States with unadjusted initial allocations that were no less than their hold harmless amounts, as described in paragraph (e)(2)(ii) of this section (the remaining States). The distribution of the remaining initial allocation funds among the remaining States will be made by reapplying the calculation in paragraph (f) of this section. This recalculation will disregard States receiving only their hold harmless amount under paragraph (e)(2)(i) of this section, so that the combined percentages of the remaining States total 100 percent.

(f) *Initial allocation factors.* (1) In determining how to make the initial allocation of training funds, the Department will apply, as provided in paragraph (f)(3) of this section, the following factors with respect to each State:

(i) The trend in the number of workers covered by certifications of eligibility during the most recent four consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(ii) The trend in the number of workers participating in training during the most recent four consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(iii) The number of workers estimated to be participating in training during the fiscal year. The estimate will be calculated by dividing the weighted average number of training participants for the State determined in paragraph (f)(1)(ii) of this section by the sum of the weighted averages for all States and multiplying the resulting ratio by the projected national average of training participants for the fiscal year, using the estimates underlying the Department's most recent budget submission or update; and

(iv) The amount of funding estimated to be necessary to provide approved training to such workers during the fiscal year. The estimate will be calculated by multiplying the estimated number of participants in paragraph (f)(1)(iii) of this section by the average training cost for the State. The average training cost will be calculated by dividing total training expenditures for the most recent four quarters by the

average number of training participants for the same time period.

(2) The Department may use such other factors that it considers appropriate.

(3) The Department will assign each of the factors listed in paragraphs (f)(1)(i) through (f)(1)(iv) of this section an equal weight. For each of these weighted factors, the Department will determine the national total and each State's percentage of the national total. Based on a State's percentage of each of these weighted factors, the Department will determine the percentage that the State will receive of the amount available for initial allocations. The percentages of initial allocation amounts calculated for all States combined will total 100 percent of initial allocation funds.

(4) The Department may, by administrative guidance published for comment, change the weights provided in paragraphs (f)(1) and (f)(3) of this section, or add additional factors. No such changes or additions will take effect before December 31, 2010.

§ 618.920 Reserve fund distributions.

(a) The remaining 35 percent of the training funds for a fiscal year will be held by the Department as a reserve. Reserve funds will be used, as needed, for additional distributions during the remainder of the fiscal year and for those States that do not receive an initial distribution. States may not receive reserve funds for TAA administration or employment and case management services without a request for training funds.

(b) A State requesting reserve funds must demonstrate that at least 50 percent of its training funds have been expended, or that it needs more funds to meet unusual and unexpected events. A State requesting reserve funds also must provide a documented estimate of expected funding needs through the end of the fiscal year. That estimate must be based on an analysis that includes at least the following:

(1) The average cost of training in the State;

(2) The expected number of participants in training through the end of the fiscal year; and

(3) The remaining funds the State has available for training.

§ 618.930 Second distribution.

The Department will distribute at least 90 percent of the total training funds for a fiscal year to the States no later than July 15 of that fiscal year. The Department will first fund all acceptable requests for reserve funds filed before June 1. If there are any funds remaining

to be distributed after these reserve fund requests are satisfied, those funds will be distributed to those States that received an initial allocation in an amount greater than their hold harmless amount, using the methodology described in § 618.910.

§ 618.940 Insufficient funds.

If, during a fiscal year, the Department estimates that the amount of funds necessary to pay the costs of approved training will exceed the training cap under § 618.900, the Department will decide how the amount of available training funds that have not been distributed at the time of the estimate will be allocated among the States for

the remainder of the fiscal year. That decision will be communicated through administrative notice.

Signed at Washington, DC, this 29th day of July, 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

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S. 1513/P.L. 111-43

To provide for an additional temporary extension of

programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (July 31, 2009; 123 Stat. 1965)

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