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WHEN: Tuesday, October 20, 2009
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 74, No. 200

Monday, October 19, 2009

Agricultural Marketing Service
RULES
Apricots Grown in Designated Counties in Washington: Decreased Assessment Rate, 53400–53402

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Rural Housing Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53513–53521

Animal and Plant Health Inspection Service
RULES
Noxious Weeds:
Old World Climbing Fern and Maidenhair Creeper, 53397–53400
PROPOSED RULES
Treatments for Sweet Cherry and Citrus Fruit from Australia and Irradiation Dose for Mediterranean Fruit Fly, 53424–53430

Broadcasting Board of Governors
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53464–53465

Coast Guard
RULES
Drawbridge Operation Regulations:
Blackwater River, Milton, FL, 53409–53410
Safety Zones:
Catholic Church Procession; San Diego Bay, San Diego, CA, 53410–53412

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53465

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
DoD Inspector General Address (DFARS Case 2009–D001), 53412–53413
Restriction on Research and Development – Deletion of Obsolete Text (DFARS Case 2009–D005), 53413

Defense Department
See Defense Acquisition Regulations System

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Economic Development Administration
NOTICES
Petitions for Eligibility to Apply for Trade Adjustment Assistance, 53473–53474

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53486–53487
Meetings:
Environmental Management Site-Specific Advisory Board, Nevada, 53487
Environmental Management Site-Specific Advisory Board, Portsmouth, 53487–53488

Environmental Protection Agency
RULES
National Primary Drinking Water Regulations:
Drinking Water Regulations for Aircraft Public Water Systems, 53590–53625
PROPOSED RULES
Protection of Stratospheric Ozone:
New Substitute in Motor Vehicle Air Conditioning Sector under Significant New Alternatives Policy (SNAP) Program, 53445–53454
NOTICES
Cross–Media Electronic Reporting Rule State Authorized Program Revision/Modification Approvals:
Minnesota, 53493–53494
Modifications to 2008 National Pollutant Discharge Elimination System (NPDES) General Permits:
Stormwater Discharges from Construction Activities, 53494–53498
Review of the National Ambient Air Quality Standards for Ozone, 53498–53499

Executive Office of the President
See Presidential Documents

Federal Accounting Standards Advisory Board
NOTICES
Issuance of Statement of Federal Financial Accounting Standards (35):
Estimating Historical Cost of General Property, Plant, and Equipment – Amending Statements, etc., 53499–53500

Federal Aviation Administration
RULES
Amendment of Class E Airspace:
Minden, NE, 53405–53406
Peoria, IL, 53406–53407
St. Louis, MO, 53403–53404
Tioga, ND, 53402–53403
Winona, MN, 53404–53405
Establishment of Class E Airspace:
Spencer, WV, 53407–53408
Modification of Class E Airspace:
Beckley, WV, 53408–53409

PROPOSED RULES
Airworthiness Directives:
Airbus Model A330–200 and –300, and Model A340–300 Series Airplanes, 53440–53442
BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes, 53433–53436
Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes, 53442–53445
Boeing Model 757 Airplanes, 53430–53433, 53436–53438
Thielert Aircraft Engines GmbH (TAE) Models TAE 125–02–99 and TAE 125–01 Reciprocating Engines, 53438–53440
NOTICES
New Tasks, Aviation Rulemaking Advisory Committee, 53579–53580
Petition for Exemption; Summary of Petition Received, 53580–53581

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 53500

Federal Energy Regulatory Commission
NOTICES
Applications:
City of Boulder, CO, 53489–53490
Lock+ Hydro Friends Fund II, LLC, et al., 53488
Mead Corp., et al., 53488–53489
Northern Natural Gas Co., 53491
Wilkesboro Hydroelectric Co. LLC, 53489
Combined Notice of Filings, 53491–53492
Complaints:
Californians for Renewable Energy v. Williams Northwest Pipeline, FERC Enforcement Hotline, 53492
Environmental Impact Statements; Availability, etc.:
Town of Afton, 53492
Settlement Agreements:
New York State Electric and Gas Corp., 53492–53493

Federal Motor Carrier Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53543–53544
Identification of Interstate Motor Vehicles; Petitions For Determinations:
New York City, Cook County and New Jersey Tax Identification Requirements, 53578–53579
Qualification of Drivers; Exemption Applications:
Diabetes, 53583–53585
Vision, 53581–53583
Qualification of Drivers; Exemption Renewals:
Vision, 53583

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 53500
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 53500

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53500–53503
Analyses of Proposed Consent Orders to Aid Public Comments:
Onyx Graphics, Inc., 53503–53504

Federal Transit Administration
NOTICES
Federal Fiscal Year 2010 Annual List of Certifications and Assurances:
Federal Transit Administration Grants and Cooperative Agreements, 53544–53578

Food and Drug Administration
NOTICES
Guidance for Industry and Review Staff on Labeling for Human Prescription Drug and Biological Products, etc.:
Availability, 53507–53508
Meetings:
Risk Evaluation and Mitigation Strategies for Certain Opioid Drugs, 53509–53510

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Humboldt–Toiyable National Forest; NV; Mountain City, Ruby Mountains, etc., 53462–53464
Meetings:
Flathead Resource Advisory Committee, 53464

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53504–53505
Meetings:
HIT Standards Committee's Implementation Workgroup, 53505
Solicitation for Members of the National Vaccine Advisory Committee, 53505–53507

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

International Trade Administration
NOTICES
Antidumping:
Frozen Warmwater Shrimp from Ecuador, 53465–53467
Final Results of Antidumping Duty Administrative Review:
Stainless Steel Plate in Coils from Belgium, 53468–53470
Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders:
Polyethylene Retail Carrier Bags from the People's Republic of China, Thailand, and Malaysia, 53470–53472

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53512
Consent Decrees:
United States v. East Shoshone County Water District, 53513

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 53521

National Institutes of Health
NOTICES
Meetings:
Soy Formula Expert Panel; Availability of Draft Expert Panel Report on Soy Formula, 53508–53509

National Oceanic and Atmospheric Administration
PROPOSED RULES
Pacific Tuna Fisheries:
Fishing Restrictions in the Longline and Purse Seine Fisheries in the Eastern Pacific Ocean, etc., 53455–53461
Protective Regulations for Killer Whales in the Northwest Region, etc., 53454–53455
NOTICES
Applications:
Marine Mammals, 53467–53468
Meetings:
Gulf of Mexico Fishery Management Council, 53472
North Pacific Fishery Management Council, 53472–53473
Takes of Marine Mammals Incidental to Specified Activities:
Taking Marine Mammals Incidental to Conducting Air-to-Surface Gunnery Missions in the Gulf of Mexico, 53474–53486

National Science Foundation
NOTICES
Meetings:
President's Committee on the National Medal of Science, 53521–53522
Proposal Review Panel for Human Development, 53522
Proposal Review Panel for Materials Research, 53521
Plan for Collection of Meteorites Issued Under the Antarctic Conservation Act of 1978, as amended, 53522

Nuclear Regulatory Commission
RULES
Industry Codes and Standards; Amended Requirements, 53402
NOTICES
Establishment of Atomic Safety and Licensing Board:
Westinghouse Electric Co., LLC, 53522–53523

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous Materials:
Revision of Requirements for Emergency Response Telephone Numbers, 53413–53423
NOTICES
Meetings:
International Standards on the Transport of Dangerous Goods, 53579

Presidential Documents
EXECUTIVE ORDERS
Committees; Establishment, Renewal, Termination, etc.:
Asian Americans and Pacific Islanders, President's Advisory Commission and White House Initiative; Establishment (EO 13515), 53633–53638

Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53462

Securities and Exchange Commission
RULES
Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers, 53628–53631
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53524
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 53524–53526
International Securities Exchange, LLC, 53527–53528
NASDAQ OMX BX Inc., 53535–53537
New York Stock Exchange LLC, 53532–53535
NYSE Amex LLC, 53537–53541
NYSE Arca Inc., 53528–53532

Small Business Administration
NOTICES
Disaster Declarations:
American Samoa, 53523
Arizona, 53523
Kentucky, 53523

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53541
Culturally Significant Objects Imported for Exhibition Determinations:
The Lost World of Old Europe: The Danube Valley 5000–3500BC, 53541–53542
The Origins of El Greco: Icon Painting in Venetian Crete, 53542
Suggestions for Updated 2009–2011 Plan of Action for Working Group on Environmental Cooperation, etc., 53542–53543

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See Pipeline and Hazardous Materials Safety Administration

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53510–53511

U.S. Customs and Border Protection
NOTICES
Meetings:
Advisory Committee on Commercial Operations of Customs and Border Protection, 53511–53512

Veterans Affairs Department
NOTICES
Privacy Act; Systems of Records, 53585–53588

Separate Parts In This Issue

Part II
Environmental Protection Agency, 53590–53625

Part III
Securities and Exchange Commission, 53628–53631

Part IV
Presidential Documents, 53633–53638

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13515 53635

7 CFR

360 53397
361 53397
922 53400

Proposed Rules:

305 53424

10 CFR

50 53402

14 CFR

71 (7 documents) 53402, 53403, 53404, 53405, 53406, 53407, 53408

Proposed Rules:

39 (6 documents) 53430, 53433, 53436, 53438, 53440, 53442

17 CFR

210 53628
229 53628
249 53628

33 CFR

117 53409
165 53410

40 CFR

141 53590

Proposed Rules:

82 53445

48 CFR

203 53412
225 53413
252 53413

49 CFR

172 53413
174 53413

50 CFR

Proposed Rules:

224 53454
300 53455

Rules and Regulations

Federal Register
Vol. 74, No. 200
Monday, October 19, 2009

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 360 and 361

[Docket No. APHIS-2008-0097]

Noxious Weeds; Old World Climbing Fern and Maidenhair Creeper

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the noxious weed regulations by adding Old World climbing fern (*Lygodium microphyllum* (Cavanilles) R. Brown) and maidenhair creeper (*Lygodium flexuosum* (Linnaeus) Swartz) to the list of terrestrial noxious weeds. This action is necessary to prevent the artificial spread of these noxious weeds into the United States.

DATES: This interim rule is effective October 19, 2009. We will consider all comments that we receive on or before December 18, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0097*) to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2008-0097, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0097.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, Noxious Weeds Program Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1236, (301) 734-5225; or Ms. Dorothy Wayson, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, Permits, Registrations, Imports, and Manuals, PPQ, APHIS, 4700 River Road Unit 52, Riverdale, MD 20737-1236, (301) 734-0772.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States or dissemination of a plant pest or noxious weed within the United States.

The PPA defines ''noxious weed'' as ''any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, and the natural resources of the United States, the public health, or the environment.'' The PPA also provides that the Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to restrictions on interstate movement within the United States. Under this authority, the Animal and Plant Health Inspection Service (APHIS) administers the noxious weeds regulations in 7 CFR part 360, which prohibit or restrict the importation and interstate movement of those plants that are designated as noxious weeds in § 360.200.

Under the authority of the Federal Seed Act of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of that Act, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. APHIS' regulations implementing the provisions of title III of the Federal Seed Act are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

In this document, we are amending the regulations by adding Old World climbing fern (*Lygodium microphyllum* (Cavanilles) R. Brown) and maidenhair creeper (*Lygodium flexuosum* (Linnaeus) Swartz) to the list of terrestrial noxious weeds in § 360.200(c) and the list of noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1). We are taking this action based on information, discussed below, that indicates that *L. microphyllum* and *L. flexuosum* are harmful noxious weeds that pose a serious threat to U.S. agriculture and the natural resources of the United States.

This information is also available in the weed risk assessment (WRA) document titled ''*Lygodium microphyllum* (Old World climbing fern), *Lygodium japonicum* (Japanese climbing fern), and *Lygodium flexuosum*,'' which may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov).

APHIS received an inquiry regarding market access for leaves of *L. microphyllum* from China to be used in basket weaving. Shortly afterward, the State of Florida requested that APHIS assess all 25 *Lygodium* species to determine whether they could be added to the list of Federal noxious weeds. A preliminary review of the genus indicated that only five species of the

Lygodium genus are considered weeds: *L. circinnatum*, *L. flexuosum*, *L. japonicum*, *L. microphyllum*, and *L. polymorphum*. Because importation of *L. microphyllum* and *L. japonicum*, which are already present in the United States, may lead to the establishment of additional populations in the United States, PPQ's Plant Epidemiology and Risk Analysis Laboratory (PERAL) prepared a WRA to determine whether these species qualify as Federal noxious weeds.

We also assessed *L. flexuosum*, which is not known to be present in the United States, because it is similar to *L. microphyllum* and *L. japonicum* and may have similar impacts if introduced. Due to the limited information available on *L. polymorphum* and *L. circinnatum*, PERAL was not able to gather sufficient evidence to assess the invasiveness of these species; however, they may be assessed separately if more information becomes available. We invite the public to submit any additional information on these species that could help us assess their invasiveness.

L. microphyllum is a vine-like fern with fronds that can grow up to 30 feet long, which can overtake and blanket environments and provide access for wildfires to reach into tree canopies. The species is native in parts of Africa, Asia, and Australia. Fertile *Lygodium* leaves contain reproductive structures filled with spores that can become windborne and spread the fern into uninfested areas. *L. microphyllum* possesses a number of traits that contribute to its destructive establishment, naturalization, and spread. These traits include its tolerance to a wide variety of light conditions, massive spore production, tolerance to fire, and rapid growth and photosynthetic rates.

In the United States, *L. microphyllum* is currently established in southern Florida, where it has rapidly invaded a variety of habitats including pine forests, wetlands, hammocks, ditches, and disturbed areas. The fern's prolific growth shades underlying vegetation and damages the habitats of federally listed threatened and endangered species in Florida in the Everglades National Park, national wildlife refuges, and other Federal and State conservation areas.

L. microphyllum has not reached the limit of its potential geographic distribution in the United States. Florida, the only state with *L. microphyllum* populations, regulates it as a State noxious weed. Florida currently has a *Lygodium* management plan, which was released in 2006, and an active control program in place. The States of Alabama, North Carolina, South Carolina, and Vermont, incorporate the Federal noxious weed list by reference into their State noxious weed lists and thus will regulate both *L. microphyllum* and *L. flexuosum* as State noxious weeds.

L. flexuosum is a vine-like fern that spreads by rhizomes and by climbing over other lowland vegetation. The species is native to temperate and tropical Southeast Asia and Australia. In its native range, it reduces rice yields, obstructs harvesting operations in rubber tree and oil palm plantations, and may compete with tea plants for resources. *L. flexuosum* is not known to be present in the United States, other than for scientific study in containment at a biological control research facility.

L. japonicum is a vine-like fern with fronds that can grow up to 30 feet long, capable of reaching into forest canopies. The species is native to tropical and temperate Asia. In the United States, it has been established since 1937 and is relatively widespread in some States, but regionalized or isolated in others. Besides being spread through horticulture, *L. japonicum* is readily wind-dispersed and can spread in contaminated pine straw and on field equipment.

There are 11 States (Alabama, Arkansas, Florida, Georgia, Hawaii, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, and Texas) with known populations of *L. japonicum*. Out of those States, only Florida and Alabama list *L. japonicum* as a State noxious weed. Florida is planning on releasing a detailed management plan for *L. japonicum* similar to the plan released for *L. microphyllum* in 2006. Outside Florida, *L. japonicum* may be controlled locally by various Federal, State, or local agencies; however, the extent of local control is unknown.

Based on APHIS' evaluation of the preliminary information generated during the weed risk assessment as well as our review of Florida's request, APHIS concluded that *L. microphyllum* and *L. flexuosum* are noxious weeds that posed a serious threat to U.S. agriculture and the environment.

Accordingly, APHIS issued a Federal Import Quarantine Order on May 30, 2008, that immediately restricted the importation from all countries of any part of *L. microphyllum* or *L. flexuosum* capable of propagation, including nursery stock, spores, and leaves (fronds), unless authorized by a PPQ permit for specified research in containment. This interim rule is intended to codify provisions of the existing Federal Order that prevent the introduction into or spread of *L. microphyllum* and *L. flexuosum* within the United States. Accordingly, we are adding *L. microphyllum* and *L. flexuosum* to the list of terrestrial weeds in § 360.200(c), thus allowing them to be imported or moved interstate only with a permit in which conditions are specified to prevent their artificial spread. Additionally, we are adding *L. microphyllum* and *L. flexuosum* to the list of noxious weed seeds in § 361.6(a)(1) with no tolerances applicable to their introduction into the United States.

The WRA recommended that we consider listing *L. japonicum* to the list of terrestrial weeds in § 360.200(c). We prepared a Federal noxious weed decision document to help evaluate whether to list *L. japonicum* as a noxious weed. This document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov). Based on the information provided in that document, we are not regulating *L. japonicum* at this time, because *L. japonicum* is not regulated by 9 of the 11 States where it occurs, and the extent of control programs throughout these States is unclear.

Federal Preemption

On May 20, 2009, the President issued a memorandum to the heads of executive departments and agencies on the subject of preemption. The memorandum states that it is the general policy of the Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. The memorandum further states:

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

- Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.
- Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the

principles outlined in Executive Order 13132.

Since 1996, Executive Order 12988, ''Civil Justice Reform,'' has required agencies to include in each regulation a statement regarding its preemptive effects. APHIS has included a statement of preemptive effects in regulatory preambles under the heading, ''Executive Order 12988.''

In compliance with the May 2009 memorandum from the White House, we are adding preemption provisions to parts 360 and 361 that would apply to this rule, as well as to the existing regulations in parts 360 and 361.

Part 360 contains restrictions on the movement into or through the United States of plants and plant products that fall within the definition of ''noxious weed'' as defined in section 403 of the Plant Protection Act (7 U.S.C. 7702 (10)).

Under section 436 of the Plant Protection Act (7 U.S.C. 7756), no State or political subdivision of a State may regulate in foreign commerce any noxious weed in order to control it, eradicate it, or prevent its dissemination. A State or political subdivision of a State also may not regulate the movement in interstate commerce of noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the noxious weed within the United States. The only exceptions to this are:

- If the prohibitions or restrictions issued by the State or political subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary; or
- If the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

Therefore, in accordance with section 436 of the Plant Protection Act, the regulations in part 360 preempt all State and local laws and regulations that are inconsistent with or exceed the regulations in part 360 unless a special need request has been granted in accordance with our regulations governing the consideration of such a request (*see* 7 CFR 301.1 through 301.1-3).

Accordingly, in this interim rule, we are adding a new § 360.400 to codify the preemptive effects of the regulations in part 360.

As noted previously, the regulations in part 361 were issued under the authority of the Federal Seed Act of 1939, as amended. The Federal Seed Act does not include in its text explicit provisions regarding preemption such as these found in the Plant Protection Act. However, APHIS' regulations in part 361 and the provisions of the Federal Seed Act on which they are based deal entirely with foreign commerce, and the regulation of foreign commerce is a power granted to the Federal Government under the U.S. Constitution. Therefore, those regulations preempt State and local laws regarding seed and screenings imported into the United States while the seed and screenings are in foreign commerce.

Accordingly, we are amending the regulations in part 361 to codify their preemptive effects. The new provisions regarding preemption will be added to § 361.2, which we have renamed ''Preemption of State and local laws; general restrictions on the importation of seed and screenings.''

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of *L. microphyllum* and *L. flexuosum* into uninfested areas of the United States and prevent the artificial spread of *L. microphyllum* within the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations by adding *L. microphyllum* and *L. flexuosum* to the list of terrestrial noxious weeds in § 360.200(c) and the list of noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1). In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. This action, which is necessary to prevent the artificial spread of these noxious weeds into the United States, is expected to have only minor, if any, economic effects on U.S. entities.

In the last 5 years, there have been only two recorded shipments of *Lygodium* species imported into the United States, one in 2006 and a second in 2008. The species that were imported are not known and may or may not have been *L. microphyllum* or *L. flexuosum*. The 2006 shipment consisted of 122 stems imported from Colombia as cut flowers. Two years later, a second shipment arrived into the United States from the United Kingdom in the form of *Lygodium* spores, ready for propagation. The value of these two *Lygodium* shipments is also not known, but clearly it was negligible when compared to the approximately $1.5 billion in floriculture products imported annually. Moreover, whatever small benefit U.S. importers would derive from selling *Lygodium* spores or cut flowers is insignificant when compared to the costs of controlling the invasive ferns if inadvertently released into the environment. Florida is already bearing such costs in combating *L. microphyllum*.

Additionally, the May 2008 Federal Importation Quarantine Order restricts the importation from all countries of any part of *L. microphyllum* or *L. flexuosum* capable of propagation, including nursery stock, spores, and leaves (fronds), unless authorized by a PPQ permit for specified research in containment. We have received no feedback from the nursery industry on the Federal Order that would lead us to believe that the restriction of *Lygodium* imports would have any impact on a substantial number of small entities.

We do not have any additional information on the importation of *Lygodium* spp. and its impacts on small entities. The intrastate movement of *L. microphyllum* is currently restricted by Florida; we do not have any information on interstate trade in *L. microphyllum*. We invite the public to submit additional information on the possible impacts listing *L. microphyllum* and *L. flexuosum* as Federal noxious weeds could have on small entities.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

■ Accordingly, we are amending 7 CFR parts 360 and 361 as follows:

PART 360–NOXIOUS WEED REGULATIONS

■ 1. The authority citation for part 360 continues to read as follows:

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

§ 360.200 [Amended]

■ 2. In § 360.200, the list in paragraph (c) is amended by adding, in alphabetical order, entries for ''*Lygodium flexuosum* (Linnaeus) Swartz (maidenhair creeper)'' and ''*Lygodium microphyllum* (Cavanilles) R. Brown (Old World climbing fern)''.

■ 3. A new § 360.400 is added to read as follows:

§ 360.400 Preemption of State and local laws.

(a) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not regulate in foreign commerce any noxious weed in order to control it, eradicate it, or prevent its dissemination. A State or political subdivision of a State also may not impose prohibitions or restrictions upon the movement in interstate commerce of noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the noxious weed within the United States. The only exceptions to this are:

(1) If the prohibitions or restrictions issued by the State or political subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary; or

(2) If the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(b) Therefore, in accordance with section 436 of the Plant Protection Act, the regulations in this part preempt all State and local laws and regulations that are inconsistent with or exceed the regulations in this part unless a special need request has been granted in accordance with the regulations in §§ 301.1 through 301.13 of this chapter.

PART 361–IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

■ 4. The authority citation for part 361 continues to read as follows:

Authority: 7 U.S.C. 1581-1610; 7 CFR 2.22, 2.80, and 371.3.

■ 5. In § 361.2, the section heading is revised and paragraphs (a) through (d) are redesignated as paragraphs (b) through (e), respectively, and a new paragraph (a) is added to read as follows:

§ 361.2 Preemption of State and local laws; general restrictions on the importation of seed and screenings.

(a) The regulations in this part preempt State and local laws regarding seed and screenings imported into the United States while the seed and screenings are in foreign commerce. Seed and screenings imported for immediate distribution and sale to the consuming public remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be considered on a case-by-case basis.

* * * * *

§ 361.6 [Amended]

■ 6. In § 361.6, paragraph (a)(1) is amended by adding, in alphabetical order, entries for ''*Lygodium flexuosum* (Linnaeus) Swartz (maidenhair creeper)'' and ''*Lygodium microphyllum* (Cavanilles) R. Brown (Old World climbing fern)''.

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

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–25119 Filed 10–16–09: 8:45 am]

BILLING CODE: 3410–34–S

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–FV–09–0038; FV09–922–1 FIR]

Apricots Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2009–2010 and subsequent fiscal periods from $2.00 to $1.00 per ton of apricots handled. The Committee locally administers the marketing order, which regulates the handling of apricots grown in designated counties in Washington. The decreased assessment rate is necessary to align the Committee's expected revenue with its proposed 2009–2010 budget.

DATES: *Effective Date: October 20, 2009.*

FOR FURTHER INFORMATION CONTACT: Robert Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, OR 97204; *telephone:* (503) 326–2724, fax: (503) 326–7440; or e-mail: *Robert.Curry@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

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

telephone: (202) 720–2491; *fax:* (202) 720–8938; or *e-mail: Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

Under the order, Washington apricot handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable apricots for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on April 1 and ends on March 31.

In an interim final rule published in the **Federal Register** on July 29, 2009, and effective July 30, 2009 (74 FR 37496, Doc. No. AMS–FV–09–0038; FV09–922–1 IFR), § 922.235 was amended by decreasing the assessment rate established for the Committee for the 2009–2010 and subsequent fiscal periods from $2.00 to $1.00 per ton of apricots handled. Because of the projections of a large crop this season, the Committee recommended the assessment rate decrease in order to maintain assessment income at a level proportionate to the current budget.

Final Regulatory Flexibility Analysis

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

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

There are approximately 300 producers of fresh apricots in the regulated production area and approximately 22 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

Based on information compiled by the National Agricultural Statistics Service, the value of Washington's total apricot production in 2008 was $6,601,000. Based on 300 apricot producers, the average annual producer revenue from the sale of Washington apricots last year was approximately $22,000 per producer. In addition, based on Committee records and 2008 f.o.b. prices ranging from $20.00 to $26.00 per 24-pound loose-pack carton as reported by AMS Market News Service, the average annual revenue per handler in 2008 was $357,197. Therefore, the majority of Washington apricot producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2009–2010 and subsequent fiscal periods from $2.00 to $1.00 per ton. The Committee unanimously recommended 2009–2010 expenditures of $7,843 and the decreased assessment rate at the May 21, 2009, meeting. The recommended assessment rate is $1.00 less than the rate in effect since the beginning of the 2008–2009 fiscal period. With an estimated 2009–2010 apricot crop of 7,600 tons, assessment income combined with funds from the Committee's monetary reserve should be adequate to cover budgeted expenses. The Committee recommended decreasing the assessment rate by 50 percent due to its estimate that the crop this season would approximately be twice the size of the crop actually harvested last year. With current crop and expense estimates, the Committee estimates that its reserve fund at the end of the 2009–2010 fiscal period will be about $8,300. This is equal to approximately one fiscal period's operational expenses as authorized by the order (§ 922.42).

The major expenditures recommended by the Committee for the 2009–2010 fiscal period include $4,800 for the management fee and $3,043 for operational expenses. In comparison, budgeted expenses for the 2008–2009 seasons were $4,800 and $2,293, respectively.

The Committee discussed alternatives to this rule. With the potential for a much larger crop this season, assessment rates over $1.00 per ton were not seriously considered because of the potential of generating too much income and thus increasing the reserve fund to an amount higher than program requirements allow.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2009–2010 season could average about $1,000 per ton. Therefore, the estimated assessment revenue for the 2009–2010 fiscal period as a percentage of total producer revenue could approximate 0.1 percent.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers of Washington apricots. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. The Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 21, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action does not impose additional reporting or recordkeeping requirements on small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim final rule were requested by September 28, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, USDA is adopting the interim final rule as a final rule without change. To view the interim final rule on the Internet, navigate to: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809fd6a6.*

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

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 37496, July 29, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 922, which was published at 74 FR 37496 on July 29, 2009, is adopted as a final rule without change.

Dated: October 9, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–25121 Filed 10–16–09; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AI53

[NRC–2008–0663]

Industry Codes and Standards; Amended Requirements; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 19, 2009, for the direct final rule that was published in the **Federal Register** on August 5, 2009. This direct final rule amended the NRC's regulations on governing vessel head inspection requirements. This amendment revised 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 was 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: The effective date of October 19, 2009, is confirmed for the direct final rule published August 5, 2009 (74 FR 38890).

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, Maryland 20852.

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: On August 5, 2009 (74 FR 38890), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR Part 50 governing vessel head inspection requirements. This amendment revises the upper range of the percentage of axial flaws from 40 percent to 60 percent permitted in a specimen set used for the qualification of nondestructive examination systems (procedures, personnel and equipment), which are used in the performance of ISI of 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. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on October 19, 2009. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 13th day of October, 2009.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E9–25049 Filed 10–16–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0504; Airspace Docket No. 09–AGL–7]

Amendment of Class E Airspace; Tioga, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Tioga, ND. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Tioga Municipal Airport, Tioga, ND. This action also amends the geographic coordinates of Tioga Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Tioga Municipal Airport.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On July 31, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Tioga, ND, reconfiguring controlled airspace at Tioga Municipal Airport, Tioga, ND. (74 FR 38142, Docket No. FAA–2009–0504). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Tioga, ND, adding additional controlled airspace extending upward from 700 feet above the surface at Tioga Municipal Airport, Tioga, ND, for the safety and management of IFR operations. This action also amends the geographic coordinates of Tioga Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will 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 of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 amends controlled airspace at Tioga Municipal Airport, Tioga, ND.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL ND E5 Tioga, ND [Amended]

Tioga, Tioga Municipal Airport, ND
(Lat. 48°22′49″ N., long. 102°53′51″ W.)
Minot AFB, ND
(Lat. 48°24′57″ N., long. 101°21′29″ W.)
Williston VORTAC
(Lat. 48°15′12″ N., long. 103°45′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Tioga Municipal Airport and within 4 miles either side of the 133° bearing from the Tioga Municipal Airport extending from the 6.7-mile radius to 10.2 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface bounded on the north by latitude 49°00′00″ N, on the east by the 47-mile radius of Minot AFB, on the south by V–430, on the southwest by the 21.8-mile radius of the Williston VORTAC, and on the west by the North Dakota/Montana state boundary.

* * * * *

Issued in Fort Worth, Texas, on Oct 1, 2009.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–24619 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0541; Airspace Docket No. 09–ACE–7]

Amendment of Class E Airspace; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for the St. Louis, MO area. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Spirit of St. Louis Airport, St. Louis, MO. Also, this action makes minor adjustments to the geographic coordinates for the Lambert-St. Louis International Airport, St. Louis VORTAC, and the Foristell VORTAC. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Spirit of St. Louis Airport.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On July 31, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at St. Louis, MO, reconfiguring controlled airspace at Spirit of St. Louis Airport, St. Louis, MO (74 FR 38146, Docket No. FAA–2009–0541). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at St. Louis, MO, adding additional controlled airspace at Spirit of St. Louis Airport, St. Louis, MO, for the safety and management of IFR operations. This action also makes minor adjustments to the geographic coordinates for the Lambert-St. Louis International Airport, St. Louis VORTAC, and the Foristell VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will 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 of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more

detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 amends controlled airspace at Spirit of St. Louis Airport, St. Louis, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE MO E5 St. Louis, MO [Amended]

St. Louis, Lambert-St. Louis International Airport, MO
(Lat. 38°44′55″ N., long. 90°22′12″ W.)
St. Louis, Spirit of St. Louis Airport, MO
(Lat. 38°39′44″ N., long. 90°39′07″ W.)
Alton, St. Louis Regional Airport, MO
(Lat. 38°53′25″ N., long. 90°02′46″ W.)
St. Charles, St. Charles County Smartt Airport, MO
(Lat. 38°55′47″ N., long. 90°25′48″ W.)
St. Louis VORTAC
(Lat. 38°51′38″ N., long. 90°28′57″ W.)
Foristell VORTAC
(Lat. 38°41′40″ N., long. 90°58′16″ W.)
ZUMAY LOM
(Lat. 38°47′17″ N., long. 90°16′44″ W.)
OBLIO LOM
(Lat. 38°48′01″ N., long. 90°28′29″ W.)
Civic Memorial NDB
(Lat. 38°53′32″ N., long. 90°03′23″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Lambert-St. Louis International Airport, and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM, and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 12R ILS localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM, and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 30L ILS localizer course extending from the airport to 8.7 miles southeast of the airport, and within a 6.8-mile radius of Spirit of St. Louis Airport, and within 3.9 miles each side of the 258° bearing from Spirit of St. Louis Airport extending from the 6.8-mile radius of Spirit of St. Louis Airport to 10.6 miles west of the airport, and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6.8-mile radius of Spirit of St. Louis Airport to 8.3 miles west of the airport, and within a 6.4-mile radius of St. Charles County Smartt Airport, and within a 6.9-mile radius of St. Louis Regional Airport, and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from the 6.9-mile radius of St. Louis Regional Airport to 7 miles north of the airport, and within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

* * * * *

Issued in Fort Worth, Texas, on October 1, 2009.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–24620 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0539; Airspace Docket No. 09–AGL–14]

Amendment of Class E Airspace; Winona, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Winona, MN. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Winona Municipal Airport—Max Conrad Field, Winona, MN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Winona Municipal Airport—Max Conrad Field.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On July 31, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Winona, MN, reconfiguring controlled airspace at Winona Municipal Airport—Max Conrad Field, Winona, MN. (74 FR 38145, Docket No. FAA–2009–0539). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Winona, MN, adding additional controlled airspace extending upward from 700 feet above the surface at Winona Municipal Airport—Max Conrad Field, Winona, MN, for the safety and management of IFR operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will 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 of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 amends controlled airspace at Winona Municipal Airport—Max Conrad Field, Winona, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL MN E5 Winona, MN [Amended]

Winona Municipal Airport—Max Conrad Field, MN
(Lat. 44°04′38″ N., long. 91°42′30″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Winona Municipal Airport—Max Conrad Field, and within 8 miles southwest and 4 miles northeast of the 121° bearing from the airport extending from the 7-mile radius to 21 miles southeast of the airport, excluding that airspace within the La Crosse, WI Class D airspace area.

* * * * *

Issued in Fort Worth, Texas, on October 1, 2009.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–24621 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0542; Airspace Docket No. 09–ACE–8]

Amendment of Class E Airspace; Minden, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Minden, NE. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Pioneer Village Field Airport, Minden, NE. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Pioneer Village Field Airport.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On July 31, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Minden, NE, reconfiguring controlled airspace at Pioneer Village Field Airport, Minden, NE. (74 FR 38143, Docket No. FAA–2009–0542). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Minden, NE, adding additional controlled airspace extending upward from 700 feet above the surface at Pioneer Village Field Airport, Minden, NE, for the safety and management of IFR operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will 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 of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 amends controlled airspace at Pioneer Village Field Airport, Minden, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE NE E5 Minden, NE [Amended]

Pioneer Village Field Airport, NE
(Lat. 40°30′54″ N., long. 98°56′44″ W.)
Kearney VOR
(Lat. 40°43′32″ N., long. 99°00′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Pioneer Village Field Airport, and within 3.9 miles each side of the 346° bearing from the airport extending from the 6.4-mile radius to 9.3 miles north of the airport; and within 3.5 miles each side of the Kearney VOR 168° radial extending from the 6.4-mile radius to 9.8 miles south of the airport.

* * * * *

Issued in Fort Worth, Texas, on October 1, 2009.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–24624 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0511; Airspace Docket No. 09–AGL–8]

Amendment of Class E Airspace; Peoria, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for the Peoria, IL area. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Mount Hawley Auxiliary Airport, Peoria, IL. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Mount Hawley Auxiliary Airport.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On July 30, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Peoria, IL, reconfiguring controlled airspace at Mount Hawley Auxiliary Airport, Peoria, IL. (74 FR 37969, Docket No. FAA–2009–0511). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Peoria, IL, adding additional controlled airspace extending upward from 700 feet above the surface at Mount Hawley Auxiliary Airport, Peoria, IL, for the safety and management of IFR operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 rule, when promulgated, will 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 of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 amends controlled airspace in the Peoria, IL airspace area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL IL E5 Peoria, IL [Amended]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 40°54′00″ N., long. 89°59′00″ W.; to lat. 40°53′31″ N., long. 89°41′35″ W.; to lat. 40°54′41″ N., long. 89°35′28″ W.; to lat. 40°52′16″ N., long. 89°29′22″ W.; to lat. 40°46′40″ N., long. 89°27′38″ W.; to lat. 40°44′01″ N., long. 89°29′35″ W.; to lat. 40°22′00″ N., long. 89°32′00″ W.; to lat.

40°26′00″ N., long. 90°07′00″ W.; to lat. 40°34′00″ N., long. 90°12′00″ W.; to lat. 40°47′00″ N., long. 90°08′00″ W.; to the point of beginning.

* * * * *

Issued in Fort Worth, Texas, on Oct 1, 2009.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–24622 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0602; Airspace Docket No. 09–AEA–13]

Establishment of Class E Airspace; Spencer, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E Airspace at Spencer, WV. This action enhances the safety and airspace management of Boggs Field Airport, Spencer, WV.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before December 3, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0602; Airspace Docket No. 09–AEA–13, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for 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 office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed 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.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's idea and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0602; Airspace Docket No. 09–AEA–13.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Spencer, WV, to provide controlled airspace required to support the Approach Procedures (SIAPs) that have been developed for Boggs Field Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this direct final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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 rule, when promulgated, will 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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 Class E airspace at Spencer, WV.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 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 Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA WV E5 Spencer, WV [NEW]

Boggs Field Airport, WV
(Lat. 38°49′26″ N., long. 81°20′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4 -mile radius of the Boggs Field Airport.

* * * * *

Issued in College Park, Georgia, on October 5, 2009.

Barry A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–24642 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0651; Airspace Docket No. 09–AEA–15]

Modification of Class E Airspace; Beckley, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action modifies Class E airspace at Beckley, WV. Controlled airspace is being expanded to contain the Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Raleigh County Memorial Airport. This action enhances the National Airspace System by providing controlled airspace in the vicinity of Beckley, WV.

DATES: Effective 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before December 3, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; *Fax:* 202–493–2251. You must identify the Docket Number FAA–2009–0651; Airspace Docket No. 09–AEA–15, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for 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 office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5610, Fax 404–305–5572.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. The direct final rule is used in this case to facilitate the timing of the charting schedule and enhance the operation at the airport, while still allowing and requesting public comment on this rulemaking action. An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the

comments received. 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/*.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0651; Airspace Docket No. 09–AEA–15.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 revises Class E Airspace at Beckley, WV by modifying the Raleigh County Memorial Airport Class E airspace to provide adequate controlled airspace for IFR operations at Beckley, WV. Controlled airspace extending upward from the surface of the Earth is required to encompass the airspace necessary for instrument approaches for aircraft operating under Instrument Flight Rules (IFR). Designations for Class E airspace areas extending upward from 700 feet above the surface of the Earth are published in FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (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 rule, when promulgated, will 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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 modifies controlled airspace at Beckley, WV.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 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 Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AEA WV E2 Beckley, WV [REVISED]

Raleigh County Memorial Airport, WV
(Lat. 37°47′14″ N., long 81°07′27″ W.)
Beckley VORTAC
(Lat. 37°46′49″ N., long 81°07′24″ W.)

Within a 4.3-mile radius of Raleigh County Memorial Airport and within 2.7 miles each side of the Beckley VORTAC 284° radial extending from the 4.3-mile radius to 7.4 miles west of the VORTAC and within 2.7 miles each side of the Beckley VORTAC 001° radial extending from the 4.3-mile radius to 7.4 miles north of the VORTAC and within 3.5 miles each side of the Beckley VORTAC 200° radial extending from the 4.3-mile radius to 9.2 miles south of the VORTAC and within 1 mile each side of the 098° radial extending from the 4.3 mile radius to 4.9 miles east of the airport.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA WV E5 Beckley, WV [REVISED]

Raleigh County Memorial Airport, WV
(Lat. 37°47′14″ N., long 81°07′27″ W.)
Beckley VORTAC
(Lat. 37°46′49″ N., long 81°07′24″ W.)

That airspace extending upward from 700 feet above the surface within an 7-mile radius of Raleigh County Memorial Airport and within 4 miles north and 8 miles south of the Beckley VORTAC 284° radial extending from the 7-mile radius to 16 miles west of the VORTAC and within 4 miles each side of the Beckley VORTAC 200° radial extending from the 7-mile radius to 10 miles south of the VORTAC.

* * * * *

Issued in College Park, Georgia, on October 7, 2009.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–24935 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0916]

Drawbridge Operation Regulation; Blackwater River, Milton, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a

temporary deviation from the regulation governing the operation of the CSX Transportation Railroad swing bridge across the Blackwater River, mile 2.80, at Milton, Florida. The deviation is necessary to replace the center pivot bearing of the swing span and will allow the bridge to remain closed to navigation for two consecutive days.

DATES: This deviation is effective from 7 a.m. on November 5, 2009 through 5 p.m. on November 6, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0916 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0916 in the ''Keyword'' box and then clicking ''Search''. 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 proposed rule, call or e-mail Lindsey Middleton, Bridge Administration Branch; telephone 504–671–2128, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: CSX Transportation has requested a temporary deviation for their railroad swing span bridge across the Blackwater River, mile 2.80, in Milton, Florida. The vertical clearance of the bridge in the closed-to-navigation position is 5.5 feet above mean sea level and 7.0 feet above mean low water. Currently, according to 33 CFR 117.271, the draw of the CSX Transportation Railroad bridge, mile 2.8 at Milton, shall open on signal; except that, from 8 p.m. to 4 a.m., the draw shall open on signal if at least eight hours notice is given. The deviation period will be in effect from 7 a.m. on November 5, 2009 until 5 p.m. on November 6, 2009. During this time the swing span bridge will be closed to navigation for the center pivot bearing of the swing span to be replaced. This work is essential for the continued operation of the draw span. Primary users of this waterway are recreational boaters. The Coast Guard will inform these users through the Local Notice to Mariners. There are no alternate routes available and this bridge cannot be open for emergencies.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 6, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–25021 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0812]

RIN 1625–AA00

Safety Zone; Catholic Church Procession; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon the navigable waters of San Diego Bay in support of the Catholic Church Procession Fireworks Display. 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 2 p.m. through 4 p.m. on October 19, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0812 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0812 in the ''Keyword'' box, and then clicking ''Search.'' 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 Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego; 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 protect the safety of the crew, spectators, and other vessels and users of the waterway from the hazards associated with fireworks displays.

For the same reasons, the Coast Guard also finds under 5 U.S.C. 553(d)(3) that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule will expose mariners to the dangers associated with the pyrotechnics used in the fireworks display.

Background and Purpose

Fireworks & Stage FX America is sponsoring the Catholic Church Procession Fireworks Display, which will include a fireworks presentation from a wooden pier at the end of Grape Street in San Diego Bay. The safety zone will encompass the navigable waters extending out 300 feet from the firing site located at the end of the pier. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other vessels and users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 2 p.m. to 4 p.m. on October 19, 2009. The safety zone will consist of a 300 foot radius around the end of Grape Street Pier 2 in San Diego Bay.

The safety zone is necessary to provide for the safety of the crews, spectators, and other vessels and users of the waterway. Persons and vessels will be 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 and 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 impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the location and small size of the safety 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 or operators of vessels intending to transit or anchor in a portion of San Diego Bay from 2 p.m. to 4 p.m. on October 19, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for only two hours during the afternoon when vessel traffic is low. 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 VHF 16 before the temporary safety zone is enforced.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, 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 the rule involves the establishment of 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–238 to read as follows:

§ 165.T11–238 Safety Zone; Catholic Church Procession; San Diego Bay, San Diego, CA.

(a) *Location.* The following area is a safety zone: All waters of San Diego Bay, from surface to bottom, within 300 feet of the firing site located at the end of Grape Street, Pier 2, San Diego, California.

(b) *Enforcement Period.* This section will be enforced from 2 p.m. to 4 p.m. on October 19, 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 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 Communications Center (COMCEN). The COMCEN may be contacted via VHF–FM Channel 16 or (619) 278–7033.

(3) All persons and vessels shall 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: September 21, 2009.

T.H. Farris,

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

[FR Doc. E9–25023 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 203

RIN 0750–AG34

Defense Federal Acquisition Regulation Supplement; DoD Inspector General Address (DFARS Case 2009–D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add the address of the DoD Inspector General office designated for receipt of information relating to a possible contractor violation of Federal criminal law or the civil False Claims Act.

DATES: *Effective Date:* October 19, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2009–D001.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3.1003(b) of the Federal Acquisition Regulation requires that, if a contracting officer becomes aware of a possible contractor violation of Federal criminal law or the civil False Claims Act, the contracting officer must coordinate the matter with the agency Office of the Inspector General or must take action in accordance with agency procedures. This final rule adds text at DFARS 203.1003(b) to provide the address of the DoD Inspector General office designated to receive such information. In addition, the rule makes a correction to the address of the DoD Inspector General office shown at 203.1004(b).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2009–D001.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 203

Government procurement.

Amy G. Williams,

Defense Federal Acquisition Regulations System.

■ Therefore, 48 CFR Part 203 is amended as follows:

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 1. The authority citation for 48 CFR Part 203 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 203.1003 is added to read as follows:

203.1003 Requirements.

(b) *Notification of possible contractor violation.* Upon notification of a possible contractor violation of the type described in FAR 3.1003(b), coordinate the matter with the following office: DoD Inspector General, Investigative Policy and Oversight, Contractor Disclosure Program, 400 Army Navy Drive, Suite 1037, Arlington, VA 22202–4704; Toll-Free *Telephone:* 866–429–8011.

203.1004 [Amended]

■ 3. Section 203.1004 is amended in paragraph (b)(2)(ii) by removing ''Washington, DC 22202–2884'' and adding in its place ''Arlington, VA 22202–4704''.

[FR Doc. E9–25066 Filed 10–16–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AG33

Defense Federal Acquisition Regulation Supplement; Restriction on Research and Development—Deletion of Obsolete Text (DFARS Case 2009–D005)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete text addressing a restriction on awards to foreign entities for DoD research and development. The restriction implemented a statutory provision that is no longer in effect.

DATES: *Effective Date:* October 19, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2009–D005.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes DFARS 225.7016, Restriction on Research and Development, since the underlying statutory provision (Section 744 of the DoD Appropriations Act for Fiscal Year 1973 (Pub. L. 92–570)) is no longer in effect. Section 744 of Public Law 92–570 prohibited the use of DoD appropriations to make an award to any foreign corporation, organization, person, or entity, for research and development in connection with any weapon system or other military equipment, if a U.S. corporation, organization, person, or entity was equally competent and willing to perform at a lower cost.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2009–D005.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.7016 [Removed]

■ 2. Section 225.7016 is removed.

225.7017, 225.7017–1, 225.7017–2, 225.7017–3, and 225.7017–4 [Redesignated]

■ 3. Sections 225.7017, 225.7017–1, 225.7017–2, 225.7017–3, and 225.7017–4 are redesignated as sections 225.7016, 225.7016–1, 225.7016–2, 225.7016–3, and 225.7016–4 respectively.

225.7016–3 [Amended]

■ 4. Newly designated section 225.7016–3 is amended in paragraph (b), in the second sentence, by removing ''225.7017–3'' and adding in its place ''225.7016–3''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7018 [Amended]

■ 5. Section 252.225–7018 is amended in the introductory text by removing ''225.7017–4'' and adding in its place ''225.7016–4''.

[FR Doc. E9–25067 Filed 10–16–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 174

[RSPA Docket No. 2006–26322 (HM–206F)]

RIN 2137–AE21

Hazardous Materials: Revision of Requirements for Emergency Response Telephone Numbers

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

ACTION: Final rule.

SUMMARY: In this final rule, PHMSA is amending the Hazardous Materials Regulations to clarify requirements governing emergency response information services provided by arrangement with hazardous materials offerors (shippers). In order to preserve the effectiveness of these arrangements for providing accurate and timely emergency response information, PHMSA is requiring basic identifying information (offeror name or contract number) to be included on shipping papers. This information will enable the emergency response information provider to identify the offeror on whose behalf it is accepting responsibility for providing emergency response information in the event of a hazardous materials incident and obtain additional information about the hazardous material as needed.

DATES: *Effective Date:* The effective date of this final rule is November 18, 2009.

Voluntary Compliance Date: PHMSA is authorizing immediate voluntary compliance beginning November 18, 2009.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials

Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 2007, PHMSA issued a notice of proposed rulemaking (NPRM; 72 FR 35961) proposing to make a narrow, clarifying change to the requirements of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) applicable to emergency response telephone numbers on shipping papers. With limited exceptions not applicable here (refer to §§ 172.600(d) and 172.604(c)), the HMR require shipments of hazardous materials to be accompanied by shipping papers and other documentation designed to communicate to transport workers and emergency responders the hazards associated with a specific shipment. This information must include the immediate hazard to health; risks of fire or explosion; immediate precautions to be taken in the event of an accident; immediate methods for handling fires; initial methods for handling spills or leaks in the absence of fire; and preliminary first aid measures. The information must be in writing, in English, and presented on a shipping paper or related shipping document (*see* § 172.602).

In addition to written emergency response information, § 172.604(a) of the HMR requires a person who offers (offeror) a hazardous material for transportation in commerce to list an emergency response telephone number on the shipping paper. The emergency response telephone number must connect a caller to the offeror or to a person capable of and accepting responsibility for providing detailed information about the hazardous materials shipment. The emergency response telephone number is used by emergency responders and transport workers to obtain detailed, product-specific information, including directions for remedial measures to be taken in the event of an incident during transportation.

The telephone number must be answered by a person who is knowledgeable about the material being shipped and possesses comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge. Under this standard, ''immediate access'' requires the emergency response information to be provided to the emergency responder or transportation worker promptly and with no undue delay. Additionally, the emergency response telephone number must be active, with no limitations, during the entire time a shipment is in transportation, including storage incidental to movement and intermodal shipments that are transferred from one carrier to another for continued transportation. Simply stated, the term ''storage incidental to movement'' means storage occurring between the time a hazardous material is offered for transportation and the time it is delivered to the consignee (*see* § 171.8 for complete definition for ''storage incidental to movement'').

As currently required in § 172.604(b), if the offeror uses the services of an emergency response information provider (ERI provider), the offeror must ensure that the ERI provider has up-to-date information on the hazardous material and that the ERI provider is capable of and has accepted responsibility for providing detailed emergency response information applicable to the hazardous material.

As discussed in the preamble to the NPRM, we have become aware of a number of problems associated with emergency response telephone numbers on shipping papers, specifically related to the increasing use by offerors of ERI providers to comply with the requirements of § 172.604. In such situations, the original offeror enters into a contract or agreement with an agency or organization (industry associations may offer this service to their members) accepting responsibility for providing detailed emergency response information in accordance with § 172.604(b). The telephone number on the shipping paper is the telephone number of the ERI provider, but the original offeror is not required to include a notation to this effect on the shipping paper, nor is the name of the original offeror required to appear on the shipping paper. Thus, the identity of the person who arranged with the ERI provider is not readily available through shipping documentation.

This problem is exacerbated because, under the HMR, a carrier or freight forwarder preparing a shipping paper for the continued movement of a hazardous material in commerce may rely on information provided by the original offeror for the preparation of the new shipping paper (for example, the classification of the material, the compatibility of the material with the packaging being used, or the emergency response telephone number), so long as the carrier or freight forwarder exercises due care. For example, a carrier or freight forwarder may rely on an emergency response telephone number provided by a preceding offeror unless it is aware (or should be aware) of facts indicating the emergency response telephone number is not operative (such as when the offeror has not contracted with the ERI provider) and does not meet the requirements of § 172.604(b).

The initial shipment of hazardous materials may be handled by several entities before reaching its final destination. For example, a motor carrier may accept a shipment from the originating offeror for transportation and deliver the material to a freight forwarder to arrange continued transportation. The freight forwarder may prepare shipping papers using the emergency response telephone number provided by the originating offeror. The freight forwarder may then arrange for continued shipment of the hazardous material by rail; a rail carrier may prepare shipping documentation using the information, including the emergency response telephone number, provided by the freight forwarder. The shipping documentation accompanying the shipment may or may not include the name of the originating offeror. In cases where the originating offeror arranges with an emergency response service to provide telephone service, the nexus between the offeror and ERI provider may be lost as new shipping papers are prepared at each stage of transportation. For example, when new shipping papers are prepared for continued transportation of the hazardous materials, the original offeror's name is typically removed and replaced with the subsequent offeror's name. When the initial offeror is also the ERI registrant, that information is no longer available when the emergency responder calls the ERI provider.

Without the name of the offeror who arranged for an emergency response service, an ERI provider may not be able to communicate the product-specific information that was provided by the original offeror. This could result in a serious problem if transportation workers or emergency response personnel must use the telephone number to request assistance in handling an accident or emergency. Most ERI providers will attempt to provide assistance whether or not they can verify that an offeror arranged for emergency response service. However, without the identification of the particular offeror who has made arrangements with the service, it may not be possible for the emergency response service to quickly access information specific to the material involved in an incident, thereby defeating the purpose of the requirement in § 172.604 to enable transport workers and emergency

response personnel to expeditiously obtain detailed information about a hazardous materials shipment. A delay or improper response due to lack of accurate and timely emergency response information may place emergency response personnel, transportation workers, and the general public at increased risk. Expeditious identification of the hazards and direction for appropriate handling and clean up associated with specific hazardous materials is critical in mitigating the consequences of hazardous materials incidents.

To remedy this problem, in the NRPM we proposed to require that when an ERI provider is used to comply with the requirements of § 172.604, the offeror must be identified on the originating shipping paper and any subsequent shipping papers that use the ERI provider's emergency response telephone number. Specifically, we proposed to:

1. Require the offeror who made the arrangement with the ERI provider to be identified on the shipping paper. Any party preparing a shipping paper would be required to identify the original offeror, by name or contract number, with the emergency response telephone number indicated on the shipping paper, and clearly note the identification in association with the emergency response telephone number, or insert and identify its own emergency response telephone number conforming to the requirements in Subpart G of Part 172.

2. Clarify that any person preparing a subsequent shipping paper for continued transport of hazardous materials must include the original offeror's name if that offeror is the registrant for the emergency response telephone service. Again, the name of the original offeror or its contract number with the ERI provider would be required to be included on the shipping paper, or the person preparing subsequent shipping papers must insert and identify by name its own valid emergency response number conforming to the requirements in Subpart G of Part 172.

3. We also proposed the following clarifications:

—To clarify that international telephone numbers used to comply with the emergency response telephone number requirement must include the country code, and city code as appropriate.

—To clarify that the emergency response telephone number requirements do not apply to transport vehicles or freight containers containing lading that has been fumigated and displays the FUMIGANT marking, as required by § 173.9 of the HMR, unless other hazardous materials are present in the cargo transport unit.

II. Comments to the NPRM

A total of 23 persons submitted comments to the NPRM, representing industry associations, emergency responders, emergency response information services, offerors, carriers, and the general public. The comments may be accessed via *http://www.regulations.gov* and are as follows:

1. Arkema, Inc.—PHMSA–2006–26322–02.
2. The FPL Group—PHMSA–2006–26322–04.
3. Jerry Shipman—PHMSA–2006–26322–06.
4. Institute of Makers of Explosives (IME)—PHMSA–2006–26322–07.
5. International Vessel Operators Hazardous Materials Association (VOHMA)—PHMSA–2006–26322–08 and 09.
6. American Trucking Associations (ATA)—PHMSA–2006–26322–10.
7. United Parcel Service (UPS)—PHMSA–2006–26322–11.
8. Air Products and Chemicals (Air Products)—PHMSA–2006–26322–12.
9. Aviation Suppliers Association (ASA)—PHMSA–2006–26322–13.
10. Council on Radionuclides and Radiopharmaceuticals, Inc. (CORAR)—PHMSA–2006–26322–14.
11. Association of American Railroads (AAR)—PHMSA–2006–26322–15.
12. Council on Safe Transportation of Hazardous Articles (COSTHA)—PHMSA–2006–26322–16.
13. National Association of Chemical Distributors (NACD)—PHMSA–2006–26322–17.
14. Veolia ES Technical Solutions LLC (Veolia)—PHMSA–2006–26322–18.
15. The Chemical Emergency Transportation Center (CHEMTREC)—PHMSA–2006–26322–19.
16. Fed Ex Express (Fed Ex)—PHMSA–2006–26322–20.
17. American Pyrotechnics Association (APA)—PHMSA–2006–26322–21.
18. Utility Solid Waste Activities Group (USWAG)—PHMSA–2006–26322–22.
19. International Association of Fire Chiefs (IAFC)—PHMSA–2006–26322–23.
20. National Paint & Coatings Association (NPCA)—PHMSA–2006–26322–24.
21. Veolia Environmental Services (Veolia)—PHMSA–2006–26322–25.
22. Lighter Association, Inc.—PHMSA–2006–26322–26.
23. Dangerous Goods Advisory Council (DGAC)—PHMSA–2006–26322–27.

III. Revisions to the HMR Adopted in This Final Rule

In this rulemaking we are requiring the offeror who is registered with the ERI provider, as reflected by the provider's telephone number on shipping papers, to be identified on the shipping paper. Specifically, we are revising the HMR to:

1. Require an offeror who has made an arrangement with an ERI provider to be identified on the shipping paper in clear association with the emergency response telephone number. In response to comments, we are clarifying that if the name of the offeror is prominently and clearly listed elsewhere on the shipping paper, it need not also be listed in association with the emergency response telephone number.

2. Clarify that any person preparing a subsequent shipping paper for continued transport of a hazardous materials shipment must include the offeror's name (whether the original or subsequent offeror) that is the registrant for the ERI provider and that will be in use for the continued transportation of the shipment. The name of the original or subsequent offeror or its contract number with the ERI provider must be included on the shipping paper. If the original or subsequent offeror is not continuing as the registrant with the ERI provider, the person preparing subsequent shipping papers must insert and identify by name its own valid emergency response telephone number conforming to the requirements in Subpart G of Part 172.

3. Clarify that the person answering the ERI provider's telephone number transmits all written information in English.

4. Clarify that international telephone numbers used to meet the emergency response telephone number requirement must include the international access code or a ''+'' sign as a placeholder for the international access code, country code, and city code as appropriate.

5. Clarify the term ''clear association'' with respect to the placement of the identity of the registrant of the ERI provider.

6. Clarify the current requirement for the emergency response telephone number to be provided on the shipping paper in a ''clearly visible'' location.

7. Clarify that the emergency response telephone number requirements do not apply to transport vehicles or freight containers containing lading that has been fumigated and displays the FUMIGANT marking, as required by

§ 173.9 of the HMR, unless other hazardous materials are present in the cargo transport unit.

The amendments in this final rule are intended to fill a gap that was unforeseen when we initially adopted these requirements in 1989 under Docket HM–126C (54 FR 27138, 06/27/89). The amendments in this final rule will help to ensure that transportation workers and emergency response personnel are provided with accurate and timely information about the hazardous materials involved in a transportation accident or other emergency. This final rule will also serve to eliminate delays in transportation due to lack of such information, and eliminate problems created when compliance personnel are not able to verify emergency response telephone numbers.

IV. Discussion of Comments

As discussed in detail below, we received comments that are mostly supportive of our proposal to require basic identifying information to be included on shipping papers and some that are not supportive. However, some comments express concerns on certain provisions and request additional revisions. Some comments, such as defining the term ''interlining carrier'' and adopting authorization to use electronic data information are beyond the scope of this rulemaking and, therefore, are not addressesd in this final rule.

DGAC agrees that it is necessary to have a clear linkage between the offeror making arrangements with an ERI provider and the provider's emergency response telephone number, but recommends that we address this issue as part of our ongoing initiative to identify ways to promote faster, more efficient communication among shippers, carriers, and emergency responders through the use of electronic data exchange technologies. This initiative is a long-term project that may not be completed for several years. This final rule is intended to minimize delay or improper response resulting from a lack of accurate and timely emergency response information. Absent regulatory action, emergency response personnel, transportation workers, and the general public could be placed at increased risk. Thus, we do not believe delaying this rulemaking is justified.

Of the commenters supporting the intent of this rulemaking, VOHMA comments that valuable time is lost when shipments are delayed while emergency responders or enforcement officers are attempting to obtain or verify emergency response information and their efforts are obstructed because the party who arranged with the ERI provider is not noted on the shipping papers. CHEMTREC, an ERI provider, comments that for the arrangement between the registrant and CHEMTREC to work effectively, the registrant must be identified on the shipping paper. The IAFC comments that first responders can prevent or reduce the amount of damage or injury at the scene if they have specific information on the hazardous materials and also states that the safety of the public and emergency responders, and the impact on business operations can depend on quickly obtaining comprehensive and correct information.

A detailed discussion of comments to the NPRM follows.

A. Reliance on Original Information

Several commenters, including Fed Ex and UPS, ask us to restate the clarification that was published under Docket HM–223A (70 FR 43638) and reiterated in the HM–206F NPRM. The clarification addressed a carrier relying on information provided by the original or previous offeror of the hazardous material.

As stated in the NPRM's preamble (72 FR 25962), the definition of a ''person who offers or offeror'' includes ''any person who performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce.'' The definition further provides that a carrier is not an offeror when it performs a function as a condition of accepting a hazardous material shipment for continued transportation without performing a pre-transportation function (*see* definition for ''pre-transportation function'' in § 171.8). In accordance with § 171.2(f), an offeror and carrier may rely on information provided by a previous offeror or carrier unless it knows or a reasonable person acting in the circumstances and exercising reasonable care would know, that the information provided is incorrect. Under § 5123(a)(1) of the Federal hazardous materials transportation law (Federal hazmat law, 49 U.S.C. 5101 *et seq.*), a person acts knowingly when the person has actual knowledge of the facts giving rise to the violation; or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

An offeror or an interconnecting carrier who knowingly or willfully provides incorrect information to a subsequent carrier, or a subsequent carrier who knowingly accepts and continues to use inaccurate information, is in violation of the HMR. A civil or criminal penalty (*see* §§ 107.329 and 107.333) may be assessed against any person subject to the HMR who knowingly or willfully offers for transportation or transports a hazardous material in a manner not complying with the HMR.

To reiterate, a carrier, freight forwarder, or other entity may rely on the previous information *unless* the entity has knowledge that the information is incorrect. Ensuring correct information is the responsibility of the person preparing shipping papers, and *any* person with knowledge of incorrect information may not continue to use that information. Communication between the original and subsequent offeror before the shipment reaches the subsequent offeror may be warranted in cases when confusion exists on whether the original offeror's ERI provider will continue to be used.

B. Use of Emergency Response Number by Subsequent Offerors

Some commenters read the NPRM as proposing to require the original offeror to maintain its emergency response information telephone number for subsequent offerors when no agreement has been authorized by the original offeror. For example, IME requests that we correct or confirm its understanding that the ''option'' to use the originating offeror's emergency response number applies only to that offeror's shipment. The commenters state that they support the intent of the rule, but that we appear to be expanding the requirement for originating offerors to provide and monitor emergency response information telephone numbers beyond the delivery of the shipment to the destination on the original offeror's shipping papers.

The commenters have misread the NPRM. We did not propose to require the original offeror to maintain an emergency response telephone number throughout subsequent offerors' movements of hazardous materials. We proposed only that the existing requirement for the notation of an emergency response telephone number be augmented by the inclusion of the registrant's name or contract number with the ERI provider. This rulemaking was prompted, in part, because some subsequent carriers when preparing new shipping papers were omitting the initial registrant's name, inserting their own name, but retaining the initial offeror's ERI provider for which the initial offeror was the registrant. Whether in cases where the previous offeror's ERI provider was intended to end upon acceptance of the shipment by

the subsequent offeror or was intended to be active for the subsequent offeror, the identifying link to the ERI provider was lost and the telephone number was no longer operative for the shipment.

Whether the original or previous offeror's ERI provider's telephone number remains active for a subsequent offeror is a matter of agreement between the two parties. A subsequent offeror may not assume that it has authorization to use the original or previous offeror's emergency response telephone number.

C. Use of the Terms ''Emergency Response Service Provider'' and ''Emergency Response Information Provider''

DGAC and CHEMTREC comment that our use of the term ''emergency response service provider'' connotes a range of emergency services beyond that required by the emergency response telephone number and may lead to confusion. The commenters suggested the use of the term ''emergency response information provider.'' We agree the term provides clarity and have made the revision.

Veolia states that the term ''emergency response information'' is defined in § 172.602(a) as the minimum information that must be made available, but that in § 172.604(a)(2), when describing the information that must be maintained by the emergency response information provider, we use the phrase ''comprehensive emergency response and incident mitigation information.'' Veolia requests that we remove the latter phrase in § 172.604 and replace it with ''emergency response information.'' We note concerning this comment that the two sections are intended for two different purposes. Section 172.602 refers to the emergency response information that must be printed on or attached to the shipping paper, while § 172.604 is specific to the emergency response telephone number. The person manning the emergency response information telephone number must be able to provide specific and detailed information about the hazardous material (for example, characteristics of the material and comprehensive emergency response information) to supplement and expand on the written emergency response information provided with the shipping paper, such as the Emergency Response Guide (ERG), including comprehensive emergency response and incident mitigation information. The person should have the capability of contacting the shipper for additional information and/or have immediate access to such information. For this reason, we are not making the requested change.

D. Comprehensive Knowledge of the Shipment and Needs of Emergency Response Personnel

Some commenters express concern about obtaining the most comprehensive knowledge regarding the specific hazardous materials being shipped, stating that the only way to do this is through direct access to the offeror. ATA states that the NPRM does not directly address the problem of ensuring that emergency responders will have direct access to the offeror. Air Products suggests that if a subsequent carrier or freight forwarder prepares its own subsequent shipping papers and uses an ''outside'' ERI provider, the subsequent offeror and provider may not have the necessary information to properly advise emergency responders on the scene. APA states that the emergency response telephone number, hazardous materials description and manifests should carry over throughout an intermodal shipment from the initial offeror to the final consignee. (**As a note:** APA contracts with a third party emergency response provider who provides detailed emergency response information conforming to § 172.604. APA members may participate in the service and register through APA, and APA submits the participant list to the ERI provider; thus, each member is individually registered.) IAFC states that general reference materials are not substitutes for direct contact with the offeror who has the most knowledge of the product.

We agree with the commenters that the offeror will have the most comprehensive knowledge about a specific hazardous material. That is why the HMR requirement for the emergency response telephone number allows for and, indeed, anticipates that the number provided by the original offeror will often be utilized throughout transportation from the original offeror to the consignee. We remind offerors and ERI providers that § 172.604(a)(2) requires the telephone number to be that of a person who is either knowledgeable of the hazardous material being shipped and has *comprehensive* emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. We agree with IAFC's point that knowledgeable contacts require more than a rote reading from general reference materials, such as the ERG. Offerors must meet the existing comprehensive emergency response requirement by supplying the ERI provider and subsequent offerors, as applicable, with complete and detailed information relevant to the hazardous material, and subsequent offerors must also supply any ERI provider that they engage for themselves with the additional information supplied to them by the original or previous offeror. We remind the reader that § 172.604(b) currently requires the ERI provider to have detailed information concerning the hazardous material and specifies that ''the person offering a hazardous material for transportation who lists the telephone number of an agency or organization shall ensure that the agency or organization has received current information on the material as required by paragraph (a)(2),'' *which specifies comprehensive and incident mitigation information for the material*. Again, a rote reading alone is not sufficient.

COSTHA contends that the existing emergency response telephone number requirement fully meets the needs of emergency response personnel and that we should only clarify the existing requirement that all hazardous materials shipping documentation must include an emergency response contact number representing the number supplied by the offeror. The Lighter Association also questions the advantage of the identification of the party who is registered with the provider, stating that products such as lighters go through many hands (sales agents, distributors, retailers and other third parties) and that often the identity of the party registered with the provider is not known. The Lighter Association asserts that identification of the material by hazard class on the shipping paper and the marking and placarding requirements are sufficient and states that the registrant most likely is ''not going to be readily available.''

These commenters appear to have misread the NPRM. The purpose of the NPRM proposals is to enable emergency responders and transportation workers to readily obtain information from a third-party provider, not for them to obtain the information from the registrant. When the provider is called and the registrant cannot be matched with the product, the provider attempts (with no obligation when an offeror is not registered) to respond with general information applicable to the shipping description, but the *product specific* information cannot be obtained because the identity of the registrant is not known. Providing comprehensive information for any hazardous material is critical to ensure that emergency response personnel and transportation workers are equipped with the means to

respond appropriately and as swiftly as possible to a hazardous material situation. Such information is particularly important if the hazardous material is shipped under a generic shipping name (*e.g.*, flammable liquid n.o.s.) where complete emergency response information may depend on an in-depth knowledge of the hazardous constituents of the material. If the emergency response information provider cannot identify the registrant, then the complete and product specific information about the hazardous material cannot be provided to the emergency responders.

We cannot emphasize enough that lack of complete information applicable to the hazardous material being transported impacts the ability of emergency response personnel to properly, safely and expeditiously take action when an incident occurs. Crucial delays can occur with the response and clean up process when the identity of the offeror registered with the ERI provider is not reflected on the shipping paper. The delays may result in serious risks to people and the environment, and may also disrupt the continued transportation of shipments when emergency responders and transportation workers are pressed to take valuable time on the scene of an incident to obtain emergency response information. CHEMTREC asks us to inform the regulated community that it makes it known to each person registering with CHEMTREC that either the previous offeror should be indicated on the shipping paper (if continuing to maintain an emergency response telephone number), or the party that has taken on the offeror function should itself be registered.

E. Format on Shipping Papers

Several commenters request that we provide a specific format for the identification of the registrant of the ERI provider, stating that, as proposed, it may not always be clear who is registered with the ERI provider. For example, COSTHA notes that shipments being consolidated into one freight container may contain materials from more than one offeror, with each providing a separate emergency response telephone number and that many less-than-truckload (LTL) carriers create manifests or delivery receipt documents that provide the original offeror's name and emergency response contact information. COSTHA states that to create shipping documents to include the offerors' name or contract number registered with the ERI provider would be confusing to emergency personnel and create more errors.

With respect to multiple shipments being consolidated into one freight container, currently, when more than one emergency response telephone number is needed for consolidated hazardous materials, the various emergency response telephone numbers are required to be noted following the applicable shipping descriptions. We do not agree that the addition of registrant information in association with the applicable telephone number will create confusion.

Veolia is supportive of the rulemaking, but requests that when the offeror noted on the shipping paper is the registrant of the ERI provider, no need exists to reenter the offeror's name near the emergency response telephone number. Similarly, DGAC states its assumption that the offeror's identity is not required to be repeated if the identification is noted ''elsewhere'' on the shipping document, particularly with international shipments.

We continue to be concerned that if the registrant with an ERI provider is not clearly identified, the nexus between the registrant and the provider will be lost. However, we agree with the commenters that if the registrant is *prominently, clearly and readily identified* elsewhere on the shipping paper—*e.g.*, the offeror listed on the shipping paper is also the registrant and clearly identified—then the registrant need not also be listed in association with the emergency response telephone number. Subsequent entities in the transportation chain (carriers, freight forwarders, *etc.*) that prepare new shipping papers must ensure that the name or the contract number of the original offeror, if that offeror's ERI telephone number remains in effect, is provided in association with the emergency response telephone number, unless prominently identified elsewhere.

CHEMTREC states that precious time is lost when the caller on the scene of an incident is having trouble identifying the registered offeror because of the lack of uniformity of the information on shipping papers. CHEMTREC also comments (and we agree) about the necessity of taking care when preparing new shipping papers with regard to ensuring that the name or contract number is not inadvertently altered, which can create problems and delays in correctly identifying the registered offeror. We received complaints that the telephone number is also difficult to quickly identify when its positioning on the shipping paper is located near other text in a manner that blends the telephone number with other text (such as when using small, difficult-to-read font size), thereby rendering the number difficult to locate and/or to read.

Based on the comments received concerning the necessity of a standard format for the registrant information, we are revising the regulatory text to read that the identification of the registrant of the emergency response telephone number provider must be placed immediately before, after, above or below the telephone number, unless the registrant is prominently, clearly and readily identified elsewhere on the shipping paper as discussed earlier in this preamble. This should provide sufficient flexibility for the creation of a shipping paper while ensuring that the registrant is clearly identified. In addition, considering the exception being incorporated in this final rule and based on the comments specific to being unable to quickly identify the registered offeror as well as identify and easily read the telephone number itself, we are revising the regulatory text by clarifying the meaning of ''clearly visible'' and ''prominently, clearly and readily identifiable'' in § 172.604(a)(3)(ii) and (b)(2), respectively. We are making this clarification so that there is no question as to the intent of the requirement, including that it encompasses the readability of the information (registered offeror and telephone number), as well as the location.

F. International Access Codes

Several commenters request clarification in the regulatory text regarding the use of international emergency response telephone numbers. DGAC suggests an expansion of the text to make clear that the international access code, country code and city code must be included when the emergency response telephone number is an international call. We agree and in this final rule have revised the regulatory text in § 172.604(a) accordingly. Additionally, we are adding the use of the ''+'' (plus) sign, which we understand is already commonly used in international commerce, as an option to noting the specific international access code. Each country has an international access code used to dial out of the country and a country calling code used to dial into a country. Generally, the international access code is replaced with a ''+'' (plus) sign for telephone numbers published for international calling. The plus sign is a universal prefix and means that the caller must use the specific prefix assigned to his or her country. Many telephones allow the plus sign to be entered, although the method may vary. For example, most GSM (global system for mobile communications) mobile

phones allow the plus sign to be entered by either holding the ''0'' (zero) key or striking the ''*'' (asterisk) key twice; the plus sign is automatically converted to the correct international access code.

UPS asks whether requiring country and city codes prohibits the use of a toll-free telephone number. This requirement does not prevent the use of a toll-free telephone number, provided an emergency responder can dial the number as it appears on the shipping paper without stopping to look up international access, country and city codes, and provided the toll-free telephone number meets the requirements in Subpart G of Part 172, including the current requirement in § 172.604(a)(2) that specifies a telephone number may not entail a call back (such as an answering service, answering machine, or beeper device) and identity provision adopted in this final rule.

G. Notification of the Pilot-in-Command

UPS is concerned that the requirements for the Notification of Pilot-in-Command (NOTOC) contains ''extraneous'' information and cites a petition for rulemaking (P–1487) in which UPS requests a thorough review of the NOTOC requirements. We will address the UPS petition in a future rulemaking.

H. Costs and Time Needed To Implement

Some commenters believe that the provision in this final rule will impose significant costs and be difficult and time consuming to implement for carriers and offerors. UPS states that the requirement will impact: (1) The design of shipping papers by impinging on scarce available space, (2) the programming of computer systems by requiring reprogramming of countless systems used to print the information, (3) communication protocols between UPS's customers and UPS's internal systems, and (4) enforcement protocols used by inspectors. UPS estimates its costs will be between $1 million to $1.5 million and entail 40—60 weeks of work to make the change. UPS states that programming resources will need to be allocated and system changes will need to be tested. COSTHA requests a review of expenses associated with adopting the requirement and an extension of the compliance date if we proceed with the final rule.

We disagree with the commenters who state that the adoption of the revision to the HMR would be too costly and time consuming to implement. The emergency response telephone number is currently required on shipping papers. Adding a notation to identify the person who contracted with the ERI provider and reprogramming the shipping papers should not add the significant time and cost to the degree these commenters suggest. Also, it is our understanding that the notation for the identity of the person registered with an ERI provider is currently relatively common industry practice. The costs associated with this rulemaking are considerably outweighed by the safety benefits resulting from faster and more efficient responses to accidents and emergencies. Moreover, the final rule will reduce transportation delays incurred when emergency responders must spend time to obtain product specific information.

UPS and Fed Ex request a two-year extended compliance date. We believe the revision in this rulemaking addresses a critical safety issue and that a two-year extended compliance date is an excessive amount of time to implement the notation on shipping papers. However, to minimize costs associated with reprogramming computer systems and implementing the notation, we agree to provide an extended compliance date until October 1, 2010 to minimize the costs for those businesses that have not already incorporated the identity of the emergency response telephone number provider's registrant into their shipping paper format. A one-year extended compliance date will also allow sufficient time to include this revision into training programs, complete changes to systems supporting shipping papers, and deplete current stocks of shipping papers if necessary.

UPS asked that the revisions in this final rule be made effective at the same time as the next publication of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transportation of Dangerous Goods by Air (ICAO Technical Instructions). We plan to submit the revision for US Variation 12 (emergency response telephone number) to ICAO before its next publication, which is scheduled to be effective on January 1, 2010.

I. Editorial Correction and Additional Revisions

UPS asked us to explain our reason for deleting the word ''or'' in § 172.604(a)(3)(i). The proposed deletion was an error and has been corrected in this final rule.

ASA and UPS state that the wording in § 172.201(d) is not consistent with the ''fuller requirement'' in § 172.604(b) and request that we repeat the § 172.604(b) text in § 172.201(d). UPS' objection is that in the NPRM, § 172.201(d) referred to identification of the ''person'' and did not reference ''or contract number.'' The proposed § 172.201(d) clearly stated: ''* * * a shipping paper must contain an emergency response telephone number and, if utilizing an emergency response information telephone number service provider, identify the person who has a contractual agreement with the service provider, *as prescribed in subpart G of this part.*'' Identifying the person in accordance with Subpart G is a clear statement and consistent with the treatment of references throughout the HMR. Repeating the particulars is redundant, but in this final rule we are adding a parenthetical ''(by name or contract number)'' following the word ''person.''

VOHMA requests that we revise § 174.26 to clarify that the requirement to include the identifying information adopted in this final rule applies. We have made the clarification.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

The amendments in this final rule should not result in significant costs to add the required information to shipping papers. The emergency response telephone number is currently required on the shipping paper. Adding a notation to identify the person who arranged with an ERI provider should not add any significant time to the process of completing a shipping paper or to the cost of providing it. Moreover, the notation on a shipping paper of the identity of the person who made arrangements with an emergency response information telephone service is currently common industry practice for the initial offeror. Additionally, we are providing an exception from the requirement where the name of the initial offeror is prominently and clearly shown elsewhere on the shipping paper.

As discussed earlier in this preamble, UPS estimates that it will incur costs between $1 million to $1.5 million and entail 40–60 weeks of work to make the change. UPS asserts that programming resources will need to be allocated and the system changes will need to be tested. We recognize that the provisions of this final rule will result in additional

compliance costs. Therefore, we are adopting a one-year transition period for offerors and carriers to implement the changes adopted in this final rule. This extended transition period will help to offset costs by providing ample time for offerors and carriers to modify systems and otherwise adapt their processes by implementing the changes during a phase-in mode. Such a phase-in implementation method will afford offerors and carriers the opportunity to incorporate the revision into training programs and complete changes to systems supporting shipping papers (and deplete current stocks of shipping papers if necessary) during a period of time that may coincide with scheduled training programs and routine or upcoming upgrades and revisions to computer systems.

As a further note, considering that the notation is already relatively common industry practice for the initial offeror, and considering that we are also providing an exception from the requirement (which was not included in the NPRM), the implementation of the revision will not be applicable to the greater numbers of responsible parties as presented in the NPRM.

Given the importance of complete and detailed information to swift and effective response to hazardous materials incidents and mitigation of the potentially harmful consequences of those incidents, we believe the benefits of the provisions of this final rule will substantially outweigh the costs that may result. The benefits include saving lives, preventing injuries, avoiding damage to property and the environment, averting costly cleanup, evacuations, closures (such as roads and businesses) and damage mitigation, and reducing associated transportation delays. The availability of accurate, complete and quickly obtained information significantly improves response efforts during transportation incidents and emergencies, and benefits offerors, carriers, emergency personnel and the public.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria set forth in Executive Order 13132 (''Federalism''). This final rule will preempt State, local and Indian Tribe requirements but will not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazmat law contains an express preemption provision (49 U.S.C. 5125(b)), preempting State, local, and Indian Tribe requirements on covered subjects, as follows:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item (3) above and would preempt State, local, and Indian Tribe requirements not meeting the ''substantively the same'' standard. Federal hazmat law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of a final rule and not later than two years after the date of issuance. The effective date of Federal preemption for this rule is 90 days from the publication date of this final rule.

C. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria set forth in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have Tribal implications, and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. In this case, although the requirements of this final rule will apply to a substantial number of small entities, none would sustain significant economic impact as a result of the rule.

Identification of potentially affected small entities. Businesses likely to be affected by this final rule are persons who offer for transportation or transport hazardous materials in commerce, including hazardous materials manufacturers and distributors; freight forwarders, transportation companies, including air, highway, rail, and vessel carriers and hazardous waste generators.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for establishments that will be subject to the proposed amendments if adopted. Based on data for 2002 compiled by the U.S. Census Bureau, more than 95 percent of persons that would be affected by this rule are small businesses.

Related Federal rules and regulations. There are no related Federal rules or regulations governing the transportation of hazardous materials in domestic or international commerce.

Consideration of alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

Conclusion. While the amendments in this final rule would apply to a substantial number of small entities, there will not be a significant impact on those entities. This final rule revises the HMR's emergency response telephone requirements to enable ERI providers and others providing such service to supply the required HMR emergency response information to first responders. The impact of this new requirement is not expected to be significant; the indication of the emergency response telephone number on shipping papers is a current requirement and the notation of the identity of the emergency response information telephone provider's registrant is currently common industry practice for the initial offeror. We are providing an exception that will include a number of offerors, and we are providing a one-year delayed compliance date. The problem, as discussed in the preamble of this

rulemaking, primarily arises from subsequent carriers omitting the registrant's name when preparing new shipping papers for a shipment continuing on to its final destination. Our amendment to add the identification of the telephone number's registrant to shipping papers will eliminate an obstruction that could interfere with the transmission of crucial emergency response information to first responders on the scene of an incident. Additionally, the amendment will serve to eliminate delays in transportation due to lack of information, and eliminate enforcement problems stemming from possible invalid emergency response telephone number violations.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

By requiring that additional information be included on certain shipping papers, this final rule may result in an increase in annual paperwork burden and costs under OMB Control No. 2137–0034. PHMSA currently has an approved information collection under OMB Control Number 2137–0034, ''Hazardous Materials Shipping Papers and Emergency Response Information'' expiring on May 31, 2011.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA submitted to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes in this final rule. PHMSA estimates that the total information collection and recordkeeping burden, including the revisions resulting from this final rule, would be as follows:

OMB Control No. 2137–0034

Annual Number of Respondents: 250,000.

Annual Responses: 260,000,000.

Annual Burden Hours: 6,609,167.

Annual Costs: $6,675,258.67.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, PHH–10, Washington, DC 20590–0001, Telephone (202) 366–8553.

F. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

G. Environmental Assessment

The National Environmental Policy Act (NEPA), §§ 4321–4375, requires Federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

Purpose and Need. As discussed elsewhere in this preamble, we have become aware of a number of problems associated with emergency response telephone numbers on shipping papers, specifically related to the increasing use by offerors of ERI providers to comply with the requirements of § 172.604. In such situations, the original offeror enters into a contract or agreement with an agency or organization (industry associations may offer this service to their members) accepting responsibility for providing detailed emergency response information in accordance with § 172.604(b). The telephone number on the shipping paper is the telephone number of the ERI provider, but the original offeror is not required to include a notation to this effect on the shipping paper, nor is the name of the original offeror required to appear on the shipping paper. Thus, the identity of the person who arranged with the ERI provider is not readily available through shipping documentation. Without the name of the offeror who arranged for an emergency response service, an ERI provider may not be able to communicate the product-specific information that was provided by the original offeror. This could result in a serious problem if transportation workers or emergency response personnel must use the telephone number to request assistance in handling an accident or emergency. Most ERI providers will attempt to provide assistance whether or not they can verify that an offeror arranged for emergency response service. However, without the identification of the particular offeror who has made arrangements with the service, it may not be possible for the emergency response service to quickly access information specific to the material involved in an incident, thereby defeating the purpose of the requirement in § 172.604 to enable transport workers and emergency response personnel to expeditiously obtain detailed information about a hazardous materials shipment. A delay or improper response due to lack of accurate and timely emergency response information may place emergency response personnel, transportation workers, and the general public at increased risk. Expeditious identification of the hazards and direction for appropriate clean up associated with specific hazardous materials is critical in mitigating the consequences of hazardous materials incidents.

Alternatives. PHMSA considered the following alternatives:

No action—Under this alternative, we would continue to permit shippers to provide an emergency response telephone number for an ERI provider with no indication of the entity that arranged for the ERI provider's services. This alternative does not address the identify safety problem. Thus, it was not selected.

Require the shipping paper to include the name or contract number of the person arranging for the ERI provider's services—Under this alternative, we would require a shipper who utilizes an ERI provider to comply with the provisions of § 172.604 to include his name or contract number so that the ERI provider can readily retrieve and provide shipment-specific information in the event of an accident or emergency. This will allow for faster, more efficient emergency response to incidents. This is the selected alternative.

Analysis of Environmental Impacts. Hazardous materials are substances that may pose a threat to public safety or the environment during transportation

because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard—from a high hazard Packing Group I to a low hazard Packing Group III material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Releases of hazardous materials, whether caused by accident or deliberate sabotage, can result in explosions or fires. Radioactive, toxic, infectious, or corrosive hazardous materials can have short- or long-term exposure effects on humans or the environment. Generally, however, the hazard class definitions are focused on the potential safety hazards associated with a given material or type of material rather than the environmental hazards of such materials.

Under the HMR, hazardous materials may be transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be reduced or eliminated through prompt clean-up/decontamination of the accident scene.

The amendments in this final rule will improve the effectiveness of the HMR by enabling emergency responders on the scene of a hazardous materials incident to quickly and efficiently identify hazards and mitigate potential risks to the environment. There are no significant environmental impacts associated with amendments in this final rule.

Consultation and Public Comment. As discussed above, PHMSA published an NPRM to solicit public comments on our proposal. A total of 23 persons submitted comments, including industry associations, shippers, carriers, ERI providers, emergency responders, and private citizens.

H. Privacy Act

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 document (or signing the document, 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), which may also be found at *http://dms.dot.gov*.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Rail carriers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

■ 2. In § 172.201, revise paragraph (d) to read as follows:

§ 172.201 Preparation and retention of shipping papers.

* * * * *

(d) *Emergency response telephone number.* Except as provided in § 172.604(c), a shipping paper must contain an emergency response telephone number and, if utilizing an emergency response information telephone number service provider, identify the person (by name or contract number) who has a contractual agreement with the service provider, as prescribed in subpart G of this part.

* * * * *

■ 3. Revise § 172.604 to read as follows:

§ 172.604 Emergency response telephone number.

(a) A person who offers a hazardous material for transportation must provide an emergency response telephone number, including the area code, for use in the event of an emergency involving the hazardous material. For telephone numbers outside the United States, the international access code or the ''+'' (plus) sign, country code, and city code, as appropriate, must be included. The telephone number must be—

(1) Monitored at all times the hazardous material is in transportation, including storage incidental to transportation;

(2) The telephone number of a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of paragraph (a) of this section; and

(3) Entered on a shipping paper, as follows:

(i) Immediately following the description of the hazardous material required by subpart C of this part; or

(ii) Entered once on the shipping paper in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found, such as by highlighting, use of a larger font or a font that is a different color from other text and information, or otherwise setting the information apart to provide for quick and easy recognition. This provision may be used only if the telephone number applies to each hazardous material entered on the shipping paper, and if it is indicated that the telephone number is for emergency response information (for

example: ''EMERGENCY CONTACT: * * *'').

(b) The telephone number required by paragraph (a) of this section must be –

(1) The number of the person offering the hazardous material for transportation when that person is also the emergency response provider. The name of the person identified with the emergency response telephone number must be entered on the shipping paper immediately before, after, above, or below the emergency response telephone number unless the name is entered elsewhere on the shipping paper in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found; or

(2) The number of an agency or organization capable of, and accepting responsibility for, providing the detailed information required by paragraph (a)(2) of this section. The person who is registered with the emergency response provider must ensure that the agency or organization has received current information on the material before it is offered for transportation. The person who is registered with the emergency response provider must be identified by name or contract number on the shipping paper immediately before, after, above, or below the emergency response telephone number in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found.

(c) A person preparing shipping papers for continued transportation in commerce must include the information required by this section. If the person preparing shipping papers for continued transportation in commerce elects to assume responsibility for providing the emergency response telephone number required by this section, the person must ensure that all the requirements of this section are met.

(d) The requirements of this section do not apply to—

(1) Hazardous materials that are offered for transportation under the provisions applicable to limited quantities; and

(2) Materials properly described under the following shipping names:

Battery powered equipment.
Battery powered vehicle.
Carbon dioxide, solid.
Castor bean.
Castor flake.
Castor meal.
Castor pomace.
Consumer commodity.
Dry ice.
Engines, internal combustion.
Fish meal, stabilized.
Fish scrap, stabilized.
Refrigerating machine.
Vehicle, flammable gas powered.
Vehicle, flammable liquid powered.
Wheelchair, electric.

(3) Transportation vehicles or freight containers containing lading that has been fumigated and displaying the FUMIGANT marking (*see* § 172.302(g)) as required by § 173.9 of this subchapter, unless other hazardous materials are present in the cargo transport unit.

PART 174—CARRIAGE BY RAIL

■ 4. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 5. In § 174.26, revise paragraph (b) to read as follows:

§ 174.26 Notice to train crews.

* * * * *

(b) A member of the crew of a train transporting a hazardous material must have a copy of a document for the hazardous material being transported showing the information required by part 172 of this subchapter, including the requirements in § 172.604(b) applicable to emergency response information.

Issued in Washington, DC, on October 6, 2009 under authority delegated in 49 CFR part 1.

Cynthia Douglass,

Acting Deputy Administrator.

[FR Doc. E9–24799 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 74, No. 200
Monday, October 19, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS-2008-0140]

Amendments to Treatments for Sweet Cherry and Citrus Fruit from Australia and Irradiation Dose for Mediterranean Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to approved phytosanitary treatments of fruits and vegetables by adding new treatment schedules for sweet cherries and for certain species of citrus fruit imported from Australia into the United States. Based on our treatment evaluation, we have determined that the proposed treatments would be effective against Mediterranean fruit fly and Queensland fruit fly, pests associated with sweet cherries and citrus fruit from Australia. We also propose to establish an approved irradiation dose for Mediterranean fruit fly of 100 gray, which is lower than the generic dose of 150 gray that is approved for all fruit flies. New peer-reviewed data indicate that the 100 gray irradiation dose will neutralize Mediterranean fruit fly. These changes would offer more flexibility in treatments while continuing to prevent the introduction or interstate movement of quarantine pests.

DATES: We will consider all comments that we receive on or before December 18, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0140*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2008-0140, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0140.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Inder P.S. Gadh, Senior Risk Manager –Treatments, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-8578.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatments regulations contained in 7 CFR part 305 (referred to below as the regulations) set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319 for fruits, vegetables, and articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. Section 305.2 lists approved treatments; paragraph (h)(2)(i) lists approved treatments specifically for imported fruits and vegetables. The irradiation treatments subpart (§§ 305.31 through 305.34) sets out standards and minimum doses for irradiation treatment of imported fruits and vegetables and of regulated articles moved interstate from quarantined areas within the United States.

We are proposing to amend the regulations by adding new treatment schedules to the list of approved treatments in § 305.2(h)(2)(i) for sweet cherries and for citrus fruit imported from Australia into the United States. These new treatment schedules would also be added to the list of approved methyl bromide treatments in § 305.6(a) and the list of approved cold treatments in § 305.16. We also propose to establish an approved irradiation dose of 100 gray (Gy) for *Ceratitis capitata* (Mediterranean fruit fly, or Medfly). This dose is lower than the currently approved generic dose of 150 Gy for all fruit flies set forth in § 305.31(a).

Phytosanitary Treatments for Sweet Cherries from Australia

Commercial shipments of fresh sweet cherries from Australia may be imported into the continental United States and Hawaii if the fruit originates from an area determined by the Animal and Plant Health Inspection Service (APHIS) to be free of fruit flies in accordance with § 319.56-5 or if the fruit receives an APHIS-approved treatment for fruit flies in accordance with treatment schedules listed in part 305.[1] For *Bactrocera tryoni* (Queensland fruit fly) and Medfly in commercial shipments of sweet cherries, methyl bromide/cold treatment combination treatments T108-a-1, T108-a-2, and T108-a-3, listed in § 305.10(a)(3) and performed in accordance with the treatment conditions in that section, are the existing approved treatments.

While the existing approved treatments for sweet cherries are effective in treating both Queensland fruit fly and Medfly, there are production areas of Australia where only one of those quarantine pests is present, so treatment for both pests is not always necessary. Also, in some instances, combination treatments for sweet cherries have resulted in diminished fruit quality. The Australian national plant protection organization (NPPO) has therefore proposed a cold treatment that targets Queensland fruit fly and a methyl bromide fumigation treatment that targets Medfly.

APHIS evaluated and approved the proposed new treatments, which are based on data assembled by the Australian NPPO. The results of our evaluation are documented in a treatment evaluation document titled

[1]The list of areas considered by APHIS to be free of fruit flies is located online at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/DesignatedPestFreeAreas.pdf*). Commodity import treatment requirements can be found in the Fruits and Vegetables Import Requirements Database at (*https://epermits.aphis.usda.gov/manual/index.cfm*).

''08 Periodic Treatment Amendments to 7 CFR Part 305'' (October 2008). Copies of the evaluation may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). We determined that the proposed treatments will effectively treat Queensland fruit fly and Medfly in sweet cherries from Australia. As a result, we are proposing to add a new methyl bromide treatment schedule T101-s-1-1 to the list of approved treatments in § 305.2(h)(2)(i) for Medfly in sweet cherries from Australia. T101-s-1-1 would be added to the methyl bromide treatment schedules in § 305.6(a) to read as follows:

Treatment schedule	Pressure	Temperature (°F)	Dosage rate (lb/1,000 ft.)	Exposure period (hours)
T101-s-1-1	NAP	63 or above	2.5	2 hours

To ensure the effectiveness of the proposed methyl bromide treatment for sweet cherries, APHIS has determined that a number of specific treatment conditions should be followed. The conditions, listed below, would be included with treatment schedule T101-s-1-1 in the Plant Protection and Quarantine (PPQ) Treatment Manual.[2]

- Fumigation of cherries only
- Chamber fumigation only
- Load factor must not exceed 21 percent (by volume)
- Fruit must be fumigated in non-sorptive ventilated export cartons
- Recirculation fan must be operated continuously during the fumigation

Additionally, treatment schedule T101-s-1-1 would need to be conducted in accordance with the general chemical treatment requirements in § 305.5.

We are also proposing to add a new cold treatment schedule T107-d-1 to the list of approved treatments in § 305.2(h)(2)(i) for Queensland fruit fly in sweet cherries from Australia. T107-d-1 would also be added to the list of cold treatment schedules in § 305.16 to read as follows:

Treatment schedule	Temperature (°F)	Exposure period
T107-d-1	33.8 or below	14 days
	37.4 or below	15 days

If treatment of sweet cherries for either Queensland fruit fly or Medfly is based on the product being from an area in Australia determined by APHIS to be free of one of these pests, this fact must be included on the phytosanitary certificate in accordance with § 319.56-5, which sets out requirements for pest-free areas.[3] This is consistent with existing certification requirements for areas determined by APHIS to be free of both pests. Existing treatments for sweet cherries would continue to be approved treatment options.

Phytosanitary Treatments for Citrus Fruit from Australia

The Australian NPPO also requested that APHIS evaluate and approve additional cold treatment schedules for certain species of citrus fruit. APHIS reviewed the data submitted by the Australian NPPO in the treatment evaluation document referred to above and determined that the proposed treatments for citrus to be exported from Australia to the United States would be effective. As a result, we are proposing to add several new cold treatment schedules to the list of approved treatments in § 305.2(h)(2)(i) for Queensland fruit fly and Medfly in citrus from Australia. These new proposed cold treatments, while less stringent than existing treatments, have been shown to be effective against their respective target pests.

T107-a-2, the proposed treatment for Medfly in oranges and tangors from Australia, would be added to the list of cold treatment schedules in § 305.16 to read as follows:

Treatment schedule	Temperature (°F)	Exposure period
T107-a-2	37.4 or below	20 days

T107-a-3, the proposed treatment for Medfly in lemons from Australia, would be added to the list of cold treatment schedules in § 305.16 to read as follows:

Treatment schedule	Temperature (°F)	Exposure period
T107-a-3	35.6 or below	16 days
	37.4 or below	18 days

T107-d-2, the proposed treatment for Queensland fruit fly in oranges, tangerines, and tangors from Australia, would be added to the list of cold treatment schedules in § 305.16 to read as follows:

[2] Available on the Internet at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml*).

[3] *See* footnote 1 for a list of areas considered by APHIS to be free of fruit flies.

Treatment schedule	Temperature (°F)	Exposure period
T107-d-2	37.4 or below	16 days

T107-d-3, the proposed treatment for Queensland fruit fly in lemons from Australia, would be added to the list of cold treatment schedules in § 305.16 to read as follows:

Treatment schedule	Temperature (°F)	Exposure period
T107-d-3	37.4 or below	14 days

These treatments would need to be conducted in accordance with the general cold treatment requirements in § 305.15. These include standards that must be met by the facility performing cold treatment and the enclosure in which cold treatment is performed; monitoring requirements; procedural requirements for performing cold treatment; and a required compliance agreement or workplan to ensure that these requirements are followed, under appropriate oversight from APHIS. Existing treatments for citrus fruit would continue to be approved treatment options.

Approved Dose for Irradiation Treatment for Medfly

The regulations in § 305.31(a) for irradiation treatment of imported fruits and vegetables specify minimum approved doses ranging from 60 Gy to 400 Gy, depending on the pests being targeted for treatment. The regulations for irradiation treatment of regulated articles moved interstate from areas quarantined for plant pests in § 305.32 and for articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands in § 305.34 refer to this list of approved doses. The fact that the required irradiation doses are specific to plant pests rather than the commodities they are associated with reflects the fact that the effectiveness of irradiation treatment depends entirely on the dose that is absorbed by the commodity. Specific characteristics of the fruits or vegetables being treated, which may need to be considered in developing other phytosanitary treatments, are irrelevant to the effectiveness of irradiation as long as the required minimum dose is absorbed.

As indicated in § 305.31(a), APHIS has approved a 150 Gy irradiation dose as a treatment to effectively treat pest risks associated with fruit flies of the family Tephritidae, including Medfly, in associated articles. However, data from USDA's Agricultural Research Service, reviewed by APHIS and subsequently published in peer-reviewed journals,[4] demonstrates the effectiveness of a 100 Gy dose in neutralizing Medfly. It is important that required irradiation doses for plant pests be set at the lowest effective level, as higher doses of irradiation treatment cost more to administer and can cause some fruits and vegetables to undergo undesirable changes in color and texture. In addition, requiring the lowest effective absorbed dose for irradiation treatment is consistent with our commitments under the International Plant Protection Convention to require the least restrictive phytosanitary measures consistent with achieving adequate phytosanitary security.

We are therefore proposing to amend the regulations in § 305.31(a) to specify a 100 Gy approved irradiation dose for Medfly. The treatment would be conducted in accordance with the other provisions of § 305.31.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis,'' which will ''describe the impact of the proposed rule on small entities'' (5 U.S.C. § 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The following economic analysis provides a factual basis to support the certification of the proposed rule to allow more flexibility in treatments of sweet cherries and citrus fruit from Australia for Medfly and Queensland fruit fly, and to establish a 100 Gy approved irradiation dose for Medfly.

The United States is the second-largest producer of sweet cherries in the world, accounting for more than 10 percent of world production. Total U.S. sweet cherry production in 2008 was 247,060 tons (224,074 metric tons), valued at $570 million. Washington, California, Oregon, and Michigan are the primary sweet cherry-producing States, accounting for more than 97 percent of the quantity produced nationwide. The marketing season for U.S. sweet cherries lasts from early May to mid-August.[5]

Globally, the United States is the largest fresh cherry trader, with $273 million in exports and $84 million in imports (mostly from Chile) in 2008. Cherries have been a popular fruit crop for consumption in the United States for many years. In 2008, per-person consumption of cherries was 2.2 pounds.

Tables 1 and 2 show the quantity and value of U.S. exports and imports of fresh sweet cherries, worldwide and in trade with Australia, over the past 5 years. As shown, fresh sweet cherry imports from Australia have been minimal, although they increased substantially in 2007, to nearly 1 percent of U.S. fresh cherry imports, and again, in 2008, to about 1.4 percent of imports.

[4]Follet, P. A. and J. W. Armstrong. 2004. Revised irradiation doses to control melon fly, Mediterranean fruit fly, and Oriental fruit fly (Diptera: Tephritidae) and a generic dose for tephritid fruit flies. *Journal of Economic Entomology* 97: 1254-1262; Torres-Rivera, Z. and G. J. Hallman. 2007. Low-dose irradiation phytosanitary treatment against Mediterranean fruit fly (Diptera: Tephritidae). *Florida Entomologist* 90: 343-346.

[5]National Agricultural Statistics Service (NASS), 2008 Preliminary Summary.

TABLE 1.—VOLUME OF U.S. TRADE OF FRESH SWEET CHERRIES, IN KILOGRAMS

Year	U. S. exports to:		U. S. imports from:		
	World	Australia	World	Australia	Import share from Australia (percent)
2004	42,860,778	1,806,426	6,408,946	1,277	0.02
2005	47,924,605	2,320,227	9,450,547	39,865	0.42
2006	42,237,537	961,860	12,926,878	2,376	0.02
2007	51,190,265	1,108,798	15,275,917	144,369	0.95
2008	45,782,592	1,554,916	24,667,589	342,948	1.39

Source: Global Trade Atlas, 2009; (*http://www.gtis.com/gta/*)

TABLE 2.—VALUE OF U.S. TRADE OF FRESH SWEET CHERRIES, IN MILLION U.S. DOLLARS

Year	U. S. exports to:		U. S. imports from:		
	World	Australia	World	Australia	Import share from Australia (percent)
2004	$186.865	$10.402	$16.085	$0.013	0.08
2005	$209.859	$10.000	$29.086	$0.079	0.27
2006	$204.912	$6.863	$43.454	$0.005	0.01
2007	$255.669	$7,643	$49.781	$0.274	0.55
2008	$272.614	$12.025	$84.074	$0.544	0.65

Source: Global Trade Atlas, 2009; (*http://www.gtis.com/gta/*)

After Brazil and China, the United States is the world's third largest producer of citrus fruits. Total U.S. citrus fruit production in 2008 was around 11 million tons. The United States is the number one producer of grapefruits and the number two producer of oranges in the world. The two major U.S. citrus-producing States are Florida and California, followed by Arizona and Texas.

The United States, Spain, and South Africa are the top three exporters of citrus, with roughly an equal share of exports. Tables 3 and 4 show the quantity and value of U.S. exports and imports of fresh and dried citrus fruits, worldwide and in trade with Australia, over the past 5 years. Citrus fruit imports from Australia have been minimal, between 4.2 and 6.2 percent of U.S. citrus imports, and have remained relatively steady in terms of volume. In terms of value (table 4), the share has slightly decreased over the 5-year period indicated, from 10.31 percent of the total citrus import share in 2004 to 7.66 percent in 2008.

TABLE 3.—VOLUME OF U.S. TRADE OF CITRUS FRUIT, FRESH AND DRIED, IN KILOGRAMS

Year	U. S. exports to:		U. S. imports from:		
	World	Australia	World	Australia	Import share from Australia (percent)
2004	1,064,206,680	14,046,557	478,905,296	26,997,917	5.64
2005	917,993,249	15,965,437	521,739,701	32,324,028	6.19
2006	964,067,652	19,074,874	550,692,978	26,771,769	4.86
2007	835,814,014	24,418,696	678,800,752	34,144,895	5.03
2008	1,021,730,291	29,577,809	600,297,180	25,347,539	4.22

Source: Global Trade Atlas, 2009; (*http://www.gtis.com/gta/*)

TABLE 4.—VALUE OF U.S. TRADE OF CITRUS FRUIT, IN MILLION U.S. DOLLARS

Year	U. S. exports to:		U. S. imports from:		
	World	Australia	World	Australia	Import share from Australia (percent)
2004	$667.948	$12.440	$307.146	$31.680	10.31
2005	$631.538	$16.942	$356.441	$36.381	10.19
2006	$703.975	$21.597	$407.356	$29.346	7.20
2007	$699.567	$20.267	$501.064	$41.661	8.31
2008	$814.667	$28.661	$422.880	$32.404	7.66

Source: Global Trade Atlas, 2009; (*http://www.gtis.com/gta/*)

As shown in tables 1 through 4, the United States imports relatively small quantities of fresh sweet cherries and citrus from Australia. For this reason, the proposed rule is expected to have minimal economic effects on U.S. entities, large or small, including cherry and citrus producers, importers, wholesalers, and distributors.

The proposed rule would bring more flexibility to the treatment requirements for cherries and citrus from Australia, but given the minimal quantities imported to the United States, this change is not expected to significantly affect their supply or cost. Likewise, any improvements in fruit quality resulting from these treatment changes is not expected to have a significant impact on supply or cost to U.S. consumers or producers.

Any businesses that may be affected are likely to be small according to Small Business Administration (SBA) guidelines. The SBA small-entity standard for cherry and citrus farms is $750,000 or less in annual receipts. APHIS does not have information on the size distribution of the relevant producers, but according to 2007 U.S. Census of Agriculture data, there were a total of 2,204,792 farms in the United States, of which approximately 97 percent had annual sales of less than $500,000, which is well below the SBA's small entity threshold. In the case of fresh fruit and vegetable wholesalers, establishments in the category ''Fresh Fruit and Vegetable Merchant Wholesalers'' (NAICS 424480) with no more than 100 employees are considered small by SBA standards. In 2002, there were a total of 5,397 fresh fruit and vegetable wholesale trade firms in the United States. Of these firms, 4,644 firms operated for the entire year; of those firms, 4,436 or 95.5 percent employed fewer than 100 employees.[6]

The proposed changes would reduce costs for Australian exporters of fresh sweet cherries and citrus to the United States by reducing the treatment requirements when either Medfly or the Queensland fruit fly is present, but not both pests. We do not know how frequently these circumstances occur. Nonetheless, the savings are expected to be minimal, and are unlikely to significantly affect the quantities of fresh sweet cherries or citrus exported to the United States. The establishment of 100 Gy as the new minimum absorbed dose for Medfly may have minimal effects for exporters to the United States of a range of commodities from countries besides Australia. However, this change is not expected to have a significant effect on the cost or supply of U.S. imports irradiated for Medfly, because the quantity of fruits, vegetables, and other articles irradiated for plant pests for import to the United States is minimal relative to the overall quantity of imported articles treated by methods other than irradiation. In addition, the revised irradiation dosage requirements are not expected to significantly affect irradiation treatment costs.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) No retroactive effect will be given to this rule; and (2) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we propose to amend 7 CFR part 305 as follows:

PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371. 3.

2. In § 305.2, the table in paragraph (h)(2)(i) is amended by adding, in alphabetical order under Australia, new entries for ''Cherry'', ''Lemons'', ''Oranges, tangerines, and tangors'', and ''Oranges, tangors'', to read as follows:

§305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

[6]NASS, 2002 Economic Census.

Location	Commodity	Pest	Treatment schedule
* * * * * * *			
Australia			
* * * * * * *			
	Cherry	*Bactrocera tryoni*	T107-d-1.
		Ceratitis capitata	T107-s-1-1.
* * * * * * *			
	Lemons	*Bactrocera tryoni*	T107-d-3.
		Ceratitis capitata	T107-a-3.
	Oranges, tangerines, and tangors	*Bactrocera tryoni*	T107-d-2.
	Oranges, tangors	*Ceratitis capitata*	T107-a-2.
* * * * * * *			

* * * * *

3. In § 305.6, the table in paragraph (a) is amended by adding, in alphabetical order, a new entry for treatment schedule T101-s-1-1 to read as follows:

§305.6 Methyl bromide fumigation treatment schedules.

(a) * * *

Treatment schedule	Pressure	Temperature (°F)	Dosage rate (lb/1000 ft.)	Exposure period (hours)
* * * * * * *				
T101-s-1-1.	NAP	63 or above	2.5	2
* * * * * * *				

* * * * *

4. In § 305.16, the table is amended by adding, in alphabetical order, new entries for treatment schedules T107-a-2, T107-a-3, T107-d-1, T107-d-2, and T107-d-3, to read as follows:

§ 305.16 Cold treatment schedules.

Treatment schedule	Temperature (°F)	Exposure period
* * * * * * *		
T107-a-2.	37.4 or below	20 days.
T107-a-3.	35.6 or below	16 days.
	37.4 or below	18 days.
* * * * * * *		
T107-d-1.	33.8 or below	14 days.
	37.4 or below	15 days.
T107-d-2.	37.4 or below	16 days.
T107-d-3.	37.4 or below	14 days.
* * * * * * *		

5. In § 305.31, the table in paragraph (a) is amended by adding, in alphabetical order, a new entry for *Ceratitis capitata* to read as follows:

§305.31 Irradiation treatment of imported regulated articles for certain plant pests.

(a) * * *

Scientific name	Common name	Dose (gray)
* *	* * *	* *
Ceratitis capitata	Mediterranean fruit fly	100
* *	* * *	* *

* * * * *

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

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–25120 Filed 10–16–09: 8:45 am]

BILLING CODE: 3410–34–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0295; Directorate Identifier 2007–NM–298–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 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 all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes. The original NPRM would have required an inspection of the two spring arms in the spin brake assemblies in the nose wheel well to determine if the spring arms are made of aluminum or composite material, and repetitive related investigative/corrective actions if necessary. The original NPRM resulted from reports of cracked and broken aluminum springs. This action revises the original NPRM to include a parts installation paragraph and to provide options for terminating the repetitive actions. We are proposing this supplemental NPRM to detect and correct cracked or broken springs. A cracked or broken spring could separate from the airplane and result in potential hazard to persons or property on the ground, or ingestion into the engine with engine damage and potential shutdown, or damage to the airplane.

DATES: We must receive comments on this supplemental NPRM by November 13, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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: Chris Hartman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6432; 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–2008–0295; Directorate Identifier 2007–NM–298–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 all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes. That original NPRM was published in the **Federal Register** on March 13, 2008 (73 FR 13492). That original NPRM proposed to require an inspection of the two spring arms in the spin brake assemblies in the nose wheel well to determine if the spring arms are made of aluminum or composite material, and repetitive related investigative/corrective actions if necessary.

Comments

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

Request To Refer to Revision 1 of the Service Bulletin

Boeing and Air Transport Association (ATA), on behalf of its member American Airlines (AAL), request that we include Revision 1 of Boeing Special Attention Service Bulletin 757–32–0176, dated October 16, 2008, in the AD. (We referred to the original issue, Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, as the appropriate source of service information in the original NPRM.) Boeing points out that the

revision will include a preferred alternative replacement part made from corrosion-resistant steel (CRES), as well as the current options allowed in the original issue of the service bulletin. The commenters state that including Revision 1 of the service bulletin in the AD would eliminate the need for additional rulemaking.

We agree with the request to include Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, as the appropriate source of service information in this supplemental NPRM. Other changes in Revision 1 include changes throughout the service bulletin to include references to the alternative replacement part, and other editorial changes such as ''springs'' (instead of ''spin brake spring arms'') and ''Toe Piece'' (instead of ''Toe Plate''). Revision 1 of the service bulletin also includes a new Figure 7, which includes steps for assembling the new spin brake assembly with a composite ring. We have therefore revised all applicable sections in this AD to refer to ''springs'' instead of ''spring arms'' to match the description in Revision 1 of the service bulletin.

We have also revised paragraph (f) of the original NPRM (paragraph (g) of this supplemental NPRM) to refer to Revision 1 of the service bulletin. Additionally, we have added a new paragraph (i) to this supplemental NPRM to specify that replacement of an aluminum spin brake assembly with a spin brake assembly made of CRES is an optional terminating action for the repetitive inspections specified in paragraph (g) of this supplemental NPRM for that spring. In addition, we have included a new paragraph (k) in this supplemental NPRM to give credit to operators who have accomplished the actions in accordance with Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007.

Request To Address Interchangeability of Parts

ATA, on behalf of its member Delta Airlines (DAL), requests that we address the interchangeability of spring arms. DAL states that the original NPRM implies the inspection to determine the type of spring arm is done once in the lifetime of the airplane. DAL further states that aluminum spring arms and composite spring arms are interchangeable; therefore, the spring arm could be changed from one to the other type at any time in the life of an airplane. DAL contends that repetitive inspections to determine the type of spring arm should be required for all airplanes unless it can be proven that aluminum brake arms are not installed and never will be.

We agree that the issue of interchangeability of spring arms needs to be clarified, although we disagree with the request to add a repetitive inspection to determine the type of spring arm. We have, instead, added a new paragraph (j) to this supplemental NPRM to specify that, as of the effective date of the proposed AD, no person may install an aluminum spring arm on any airplane unless it has been inspected and all applicable related investigative and corrective actions have been applied in accordance with the requirements of paragraph (g) of this supplemental NPRM.

Request To Allow Alternative Procedure

Northwest Airlines (NWA), and ATA on behalf of its member DAL, request that we allow replacement of the brake arm in accordance with the Boeing 757 Airplane Maintenance Manual (AMM) 32–45–05, Nose wheel spin brake—maintenance practices. NWA states that these procedures have been in place for a long time and are equivalent to the procedures for the replacement specified in Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007. The commenters assert that including a note stating that the AMM is acceptable as an alternative procedure would alleviate compliance concerns if the replacement was or is done in accordance with the AMM procedures, but not concurrently with the inspection proposed in the original NPRM.

We agree with the commenters that the procedures in the service bulletin and in the AMM are equivalent. However, Part 5 of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, already refers to the AMM procedures; therefore, it is not necessary for us to revise the supplemental NPRM to include a reference to the AMM. We have not changed this supplemental NPRM in this regard.

Requests To Clarify Compliance Times

ATA, on behalf of its member AAL, requests that we revise the NPRM to clarify the compliance times. AAL explains that the original NPRM refers to paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, as the source for compliance times. However, AAL notes that the table in paragraph 1.E. guides operators to perform the actions in accordance with Parts 2, 3, and 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007. Part 2 includes a note that states that Parts 3 and 4 ''must be done'' at the same time as Part 2 where aluminum spin break arms are installed; AAL states that this note is incorrect.

We agree with the commenter that Parts 2, 3, and 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, do not need to be done simultaneously. Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, revised Part 2 to specify that Parts 3 and 4 ''can be done'' at the same time. The compliance times in paragraph 1.E., ''Compliance,'' are correct; therefore, we have not changed the supplemental NPRM in this regard.

Request To Clarify Part 1 and Part 6 Compliance

ATA, on behalf of DAL, requests that we address providing for access and close-up at times convenient to the operators' maintenance schedules. DAL notes that Parts 1 and 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, spell out access and close-up requirements. DAL states that operators might wish to combine the inspection proposed in the original NPRM with other maintenance visits where access is already available. DAL states that tracking compliance for access and close-up tasks using the procedures specified in the original NPRM would add paperwork without value. DAL requests that we add a note to the supplemental NPRM that states that Parts 1 and 6 of the Accomplishment Instructions are for operator use and that compliance documentation is not required.

We disagree with the request to change this supplemental NPRM to state that Parts 1 and 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, are for operator use only. Both Note 7 under paragraph 3.A. of Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, and Note 8 under paragraph 3.A. of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, give provisions for operators to use other accepted alternative procedures for actions specified in the Accomplishment Instructions when the words ''refer to'' are used. Those words are used in both Parts 1 and 6 of the Accomplishment Instructions. In addition, although these actions are

necessary to accomplish the inspections, Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, provides alternative methods for access and close-up, as defined in Notes 5 and 6 under paragraph 3.A. of the Accomplishment Instructions. Since the suggested note is already contained in the Accomplishment Instructions of the service bulletin, no additional notes are necessary in this supplemental NPRM. We have not changed this supplemental NPRM in either regard.

Request To Address Ferry Permits

ATA, on behalf of DAL, requests that we state that since removal of the brake arms is allowed by the Minimum Equipment List (MEL), no ferry permit information is included in this supplemental NPRM. The commenter points out that many ADs include language regarding ferry flights.

We disagree with the request to address ferry permits (also called ''special flight permits'') in this supplemental NPRM. As specified in the ''Relevant Service Information'' section of the original NPRM, Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, states that the airplane can be operated for 10 calendar days with the spin brake spring arms removed provided the airplane is operated within the restrictions given in the Boeing 757 Master Minimum Equipment List (MMEL). If necessary, special flight permits, and the process for applying for them, are described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199); it is not necessary to change this supplemental NPRM in this regard.

Request To Revise Cost Estimate

Continental Airlines (CAL) believes that the cost estimate given in the original NPRM is relatively low as it assumes zero fallout. If CAL decides either to accomplish the recommended terminating action (which would be to install a CRES spring arm) due to a crack or to avoid the repetitive inspections, it will not only cost around $10,000 for parts and labor per spring arm, but will add weight to the airplane, making for additional yearly fuel costs.

We infer that CAL would like us to revise the ''Costs of Compliance'' section of the original NPRM. We disagree. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include the cost of optional actions, although we recognize that doing the optional terminating action imposes additional operational costs. We have not changed this supplemental NPRM in this regard.

Requests To Clarify Inspections

NWA and CAL request that we clarify the inspections. CAL believes that the visual and high-frequency eddy current (HFEC) inspections are redundant and give somewhat contradictory information about the failure mode of the spring arm. CAL recommends that Boeing and the FAA review the inspection intervals again before the next revision of the service bulletin. NWA finds it unusual that Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, has two separate and parallel inspection programs to look for cracking in the subject spring arms. One inspection program is a 300-cycle repetitive general visual inspection and the other is a 1,500-cycle repetitive HFEC inspection. NWA asks the FAA to work with Boeing to clarify that these inspections are either parallel to or optional to each other.

We disagree that the inspections are redundant. The manufacturer has determined that both inspections are needed for the required Damage Tolerance Rating (DTR). The manufacturer states that analytical crack growth and residual strength do not match the cracking found in service, and that there are several variables that can affect the stress in the part. The HFEC inspection is the minimum required at the longer 1,500-flight-cycle intervals, while the general visual inspection provides added safety for cracking at 300 flight cycle intervals. Therefore, both the general visual and the HFEC inspections are necessary to meet the DTR. We have not changed this supplemental NPRM in this regard.

Request To Revise Repetitive Inspection Interval

Air Astana requests that we consider the possibility of revising the repetitive interval from 1,500 flight cycles to 1,800 flight cycles. Air Astana points out that its fleet of Model 757–200 airplanes accumulates 1,800 flight cycles between C-checks.

We disagree with the request to revise the repetitive inspection intervals. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. These maintenance schedules can vary greatly from operator to operator. However, according to the provisions of paragraph (l) of this supplemental NPRM, we may approve a request to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety. We have not changed this supplemental NPRM 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. Certain changes 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.

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.

Costs of Compliance

We estimate that this proposed AD would affect 668 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD for U.S. operators to be $53,440, or $80 per product.

Authority for This Rulemaking

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

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

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

Regulatory Findings

We determined that this 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–2008–0295; Directorate Identifier 2007–NM–298–AD.

Comments Due Date

(a) We must receive comments by November 13, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracked and broken aluminum springs. We are issuing this AD to detect and correct cracked or broken springs. A cracked or broken spring could separate from the airplane and result in potential hazard to persons or property on the ground, or ingestion into the engine with engine damage and potential shutdown, or damage to the airplane.

Compliance

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

Inspections and Corrective Actions

(g) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, except that where Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, specifies a compliance time after the date ''on this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD: Do a general visual inspection to determine the material (aluminum or composite) of the two springs in the spin brake assemblies in the nose wheel well. A review of airplane maintenance records is acceptable in lieu of this inspection if the material can be conclusively determined from that review. Do all applicable related investigative and corrective actions, and all repetitive inspections thereafter, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008. Do all actions in accordance with Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008.

Optional Terminating Actions

(h) Replacing an aluminum spin brake assembly with a spin brake assembly made of composite material in accordance with Figure 5 of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, ends the repetitive inspections required by paragraph (g) of this AD for that spring.

(i) Replacing an aluminum spring with a spring made of corrosion–resistant steel (CRES), in accordance with Figure 6 of Boeing Special Attention Service Bulletin 757–32–0176, Revision 1, dated October 16, 2008, ends the repetitive inspections required by paragraph (g) of this AD for that spring.

Parts Installation

(j) As of the effective date of this AD, no person may install an aluminum spring on any airplane unless it has been inspected and all applicable related investigative and corrective actions have been applied in accordance with the requirements of paragraph (g) of this AD.

Credit for Previous Revision of Service Bulletin

(k) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–32–0176, dated September 10, 2007, are acceptable for compliance with the corresponding requirements 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:* Chris Hartman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6432; 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.

Issued in Renton, Washington, on October 5, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–24984 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0912; Directorate Identifier 2009–NM–047–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the

products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Reports have been received of finding corrosion at the Frame 29 wing-to-fuselage attachment lug plate joint. This condition, if not detected and corrected, could result in a degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment.

The unsafe condition is degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment, which could result in loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 3, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0912; Directorate Identifier 2009–NM–047–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0046, dated March 2, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Reports have been received of finding corrosion at the Frame 29 wing-to-fuselage attachment lug plate joint. This condition, if not detected and corrected, could result in a degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment.
>
> The current method of inspecting the Frame 29 wing-to-fuselage attachment lug plate joint for corrosion is not considered adequate for finding corrosion in this particular area.
>
> To address this concern, BAE Systems (Operations) Limited has published Inspection Service Bulletin ISB.53–213, which replaces current Maintenance Review Board Report Structurally Significant Items Task 53–20–103 (equal to Maintenance Planning Document Tasks 532003–DVI–10000–1, 532003–DVI–10000–2 and 532003–DVI–10000–3) and Corrosion Prevention and Control Programme Task C53–230–02–01.
>
> For the reason described above, this AD requires [detailed] repetitive inspections of the Frame 29 wing-to-fuselage attachment lug plate joint [for discrepancies, which are corrosion and fatigue cracking of the bolts and fastener bores; degraded, cracked, missing, and poor condition sealant] and repair(s) [which include replacing bolts, contacting BAE Systems for repair instructions and doing the repair, and re-applying sealant], as necessary.

The unsafe condition is degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment, which could result in loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.53–213, dated May 21, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 12 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 $960.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2009–0912; Directorate Identifier 2009–NM–047–AD.

Comments Due Date

(a) We must receive comments by December 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes, and BAE Systems (Operations) Limited Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

Reports have been received of finding corrosion at the Frame 29 wing-to-fuselage attachment lug plate joint. This condition, if not detected and corrected, could result in a degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment.

The current method of inspecting the Frame 29 wing-to-fuselage attachment lug plate joint for corrosion is not considered adequate for finding corrosion in this particular area.

To address this concern, BAE Systems (Operations) Limited has published Inspection Service Bulletin ISB.53–213, which replaces current Maintenance Review Board Report Structurally Significant Items Task 53–20–103 (equal to Maintenance Planning Document Tasks 532003–DVI–10000–1, 532003–DVI–10000–2 and 532003–DVI–10000–3) and Corrosion Prevention and Control Programme Task C53–230–02–01.

For the reason described above, this AD requires repetitive [detailed] inspections of the Frame 29 wing-to-fuselage attachment lug plate joint [for discrepancies, which are corrosion and fatigue cracking of the bolts and fastener bores; degraded, cracked, missing, and poor condition sealant] and repair(s) [which include replacing bolts, contacting BAE Systems for repair instructions and doing the repair and re-applying sealant], as necessary.

The unsafe condition is degradation of the structural integrity of Frame 29 and the wing-to-fuselage attachment, which could result in loss of control of the airplane.

Actions and Compliance

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

(1) Within 24 months after the effective date of this AD, do a detailed inspection for discrepancies of the frame 29 wing-to-fuselage attachment lug plate joint, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–213, dated May 21, 2008.

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

(2) Repeat the inspection required by paragraph (f)(1) of this AD thereafter at intervals not to exceed 48 months.

(3) During any inspection required by paragraph (f)(1) or (f)(2) of this AD, if it is not possible to replace a removed bolt with another bolt having the same part number as a replacement item, before further flight, contact BAE Systems to replace the removed bolt with an alternative bolt and do the approved BAE Systems repair.

(4) If during any inspection required by paragraph (f)(1) or (f)(2) of this AD, any discrepancy is found, before further flight, repair in accordance with paragraph 2.C. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–213, dated May 21, 2008.

(5) Although BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–213, dated May 21, 2008, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows. Although BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–213, dated May 21, 2008, and European Aviation Safety Agency AD 2009–0046, dated March 2, 2009, specify to submit certain information to the manufacturer, this AD does not include that requirement.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0046, dated March 2, 2009; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–213, dated May 21, 2008; for related information.

Issued in Renton, Washington, on October 5, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–24985 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0908; Directorate Identifier 2009–NM–067–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 757 airplanes. This proposed AD would require replacing the power control relays for the fuel boost pumps and override pumps with new relays having a ground fault interrupt (GFI) feature. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent damage to the fuel pumps caused by electrical arcing that could introduce an ignition source in the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by December 3, 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: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6482; 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–2009–0908; Directorate Identifier 2009–NM–067–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address

unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, Single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

As part of the SFAR 88 required review, Boeing determined that the power control relays for the fuel boost pumps and override pumps should be replaced with new relays having a ground fault interrupt (GFI) feature. The relays are located in the P33 and P37 equipment panels in the main equipment center. The GFI feature is intended to protect the fuel pumps from damage caused by electrical arcing by removing electrical power from the pump if a ground fault is detected. Electrical arcing, if not prevented, could introduce an ignition source in the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 757–28A0078, dated July 16, 2008 (for Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes); and Boeing Alert Service Bulletin 757–28A0079, dated July 16, 2008 (for Boeing Model 757–300 series airplanes). These service bulletins describe procedures for replacing the power control relays for the fuel boost pumps and override pumps with new relays having a ground fault interrupt (GFI) feature. The replacement also includes an operational test of the fuel boost pumps, override pumps, and new relays.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Airworthiness Limitation (AWL) 28–AWL–21, of Section 9 of the Boeing 757 Maintenance Planning Document (MPD) Document, D622N001–9, Revision March 2008, which was required by AD 2008–10–11, is also related to this proposed AD by including a repetitive operational test of the GFI relays, and repair of any failed GFI relay to ensure continued functionality of the GFI circuit.

Costs of Compliance

We estimate that this proposed AD would affect 696 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Replacement	7	$80	$12,600	$13,160	696	$9,159,360

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–2009–0908; Directorate Identifier 2009–NM–067–AD.

Comments Due Date

(a) We must receive comments by December 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category; as identified in the applicable service bulletin in paragraphs (c)(1) or (c)(2) of this AD.

(1) For Model 757–200, –200PF, and –200CB series airplanes: Boeing Alert Service Bulletin 757–28A0078, dated July 16, 2008.

(2) For Model 757–300 series airplanes: Boeing Alert Service Bulletin 757–28A0079, dated July 16, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent damage to the fuel pumps caused by electrical arcing that could introduce an ignition source in the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Replacement

(g) Within 60 months after the effective date of this AD: Replace the power control relays for the fuel boost pumps and override pumps with new relays having a ground fault interrupt (GFI) feature, and do an operational test, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–28A0078, dated July 16, 2008 (for Model 757–200, –200CB, and –200PF airplanes); or Boeing Alert Service Bulletin 757–28A0079, dated July 16, 2008 (for Model 757–300 airplanes).

Alternative Methods of Compliance (AMOCs)

(h)(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: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; 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.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–24987 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0948; Directorate Identifier 2009–NE–30–AD]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Models TAE 125–02–99 and TAE 125–01 Reciprocating Engines

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 (MCAIs) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAIs describe the unsafe condition as:

As a consequence of occurrences and service experience, Thielert Aircraft Engines GmbH has introduced a new rail pressure control valve part number (P/N) 05–7320–E000702 and P/N 02–7320–04100R3 and has amended the Airworthiness Limitation Section (ALS) of the Operation & Maintenance Manual OM–02–02 to include a replacement of the rail pressure control valve. Failure of this part could result in in-flight shutdowns of the engine(s).

We are proposing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

DATES: We must receive comments on this proposed AD by November 18, 2009.

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

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

Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, *telephone:* +49–37204–696–0; *fax:* +49–37204–696–55; *e-mail: info@centurion-engines.com,* for the service information identified in this proposed AD.

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 the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199.

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–2009–0948; Directorate Identifier 2009–NE–30–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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued AD 2008–0128, dated July 9, 2008, and AD 2008–0215, dated December 5, 2008 (referred to after this as ''the MCAIs''), to correct an unsafe condition for the specified products. These MCAIs state:

As a consequence of occurrences and service experience, Thielert Aircraft Engines GmbH has introduced a new rail pressure control valve P/N 05–7320–E000702 and 02–7320–04100R3 and has amended the ALS of the Operation & Maintenance Manual OM–02–02 to include a replacement of the rail pressure control valve. Failure of this part could result in in-flight shutdowns of the engine(s).

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA has notified us of the unsafe condition described in the MCAI. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require initial and repetitive replacements of the rail pressure control valve.

Differences Between This AD and the MCAIs or Service Information

We have reviewed the MCAIs and related service information and, in general, agree with their substance. But we have found it necessary to reduce the initial compliance time for TAE 125–02–99 engines from within 110 flight hours to within 100 flight hours, and for TAE 125–01 engines from within the next 3 months to within 100 flight hours. We also have found it necessary to reference a specific repetitive replacement compliance time for the rail pressure control valve of within every 600 flight hours. The MCAIs instruct the operators to follow Thielert Maintenance Manual, Chapter 5, Airworthiness Limitations, for the repetitive compliance time. We have also found it necessary to exclude the repetitive inspections of the alternator on TAE 125–01 engines, as we consider these inspections as maintenance actions. We made these changes 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.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 370 TAE 125–01 and TAE 125–02–99 reciprocating engines installed on products of U.S. registry. We also estimate that it would take about 1.5 work-hours per engine to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $500 per engine. Based on these figures, we estimate the cost of the proposed AD for initial replacement, on U.S. operators to be $229,400.

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, 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:

Thielert Aircraft Engines GmbH: Docket No. FAA–2009–0948; Directorate Identifier 2009–NE–30–AD.

Comments Due Date

(a) We must receive comments by November 18, 2009.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) models TAE 125–01 and TAE 125–02–99 reciprocating engines installed in, but not limited to, Cessna 172 and Reims-built) F172 series (EASA STC No. EASA.A.S.01527); Piper PA–28 series (EASA STC No. EASA.A.S. 01632); APEX (Robin) DR 400 series (EASA STC No. A.S.01380); and Diamond Aircraft Industries Models DA40 and DA42 airplanes.

Reason

(d) As a consequence of occurrences and service experience, Thielert Aircraft Engines GmbH has introduced a new rail pressure control valve part number (P/N) 05–7320–E000702 and P/N 02–7320–04100R3 and has amended the Airworthiness Limitation Section (ALS) of the Operation & Maintenance Manual OM–02–02 to include a replacement of the rail pressure control valve. Failure of this part could result in in-flight shutdowns of the engine(s).

This AD results from mandatory continuing airworthiness information (MCAIs) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Actions and Compliance

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

TAE 125–02–99 Reciprocating Engines

(1) For TAE 125–02–99 reciprocating engines, within 100 flight hours after the

effective date of this AD, replace the existing rail pressure control valve with a rail pressure control valve part number (P/N) 05–7320–E000702, and modify the Vrail plug to make it compatible with the replacement rail pressure control valve.

(2) Guidance on the valve replacement and rail modification specified in paragraph (e)(1) of this AD can be found in Thielert Repair Manual RM–02–02, Chapter 73–10.08, and Chapter 39–40.08, respectively.

TAE 125–01 Reciprocating Engines

(3) For TAE 125–01 reciprocating engines, within 100 flight hours after the effective date of this AD, replace the existing rail pressure control valve with a rail pressure control valve, P/N 02–7320–04100R3.

(4) Guidance on the valve replacement specified in paragraph (e)(3) of this AD can be found in Thielert Repair Manual RM–02–01, Chapter 29.0.

TAE 125–02–99 and TAE 125–01 Engines, Repetitive Replacements of Rail Pressure Control Valves

(5) Thereafter, for affected TAE 125–02–99 and TAE 125–01 engines, replace the rail pressure control valve with the same P/N valve within every 600 flight hours.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and/or service information as follows:

(1) We reduced the initial compliance time for TAE 125–02–99 reciprocating engines from within 110 flight hours to within 100 flight hours, and for TAE 125–01 reciprocating engines from within the next 3 months to within 100 flight hours.

(2) We require a repetitive replacement compliance time for the rail pressure control valve of within every 600 flight hours. The MCAIs instruct the operators to follow Thielert Maintenance Manual, Chapter 5, Airworthiness Limitations, for the repetitive compliance time.

(3) We exclude the repetitive inspections of the alternator on TAE 125–01 engines, as we consider these inspections as maintenance actions.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD 2008–0128, dated July 9, 2008, EASA AD 2008–0215, dated December 5, 2008, Thielert Service Bulletin No. TAE 125–1008 P1, Revision 1, dated September 29, 2008, and Thielert Repair Manual RM–02–02, for related information. Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, *telephone:* +49–37204–696–0; *fax:* +49–37204–696–55; *e-mail: info@centurion-engines.com,* for a copy of this service information.

(i) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on October 13, 2009.

Carlos Pestana,

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

[FR Doc. E9–25035 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0914; Directorate Identifier 2009–NM–122–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

In the door 2 area, the hat-racks are supplied with a basic wire harness which includes ''Oxygen Masks'' activation.

In case of a monument installation, the respective non-used hat-rack connections between monument and outer skin are put on stow. It was noticed in production, that the distance between the stowed wire harness and the monument could be too small. This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

* * * * *

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 December 3, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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–2009–0914; Directorate Identifier 2009–NM–122–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0077, dated April 6, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

In the door 2 area, the hat-racks are supplied with a basic wire harness which includes ''Oxygen Masks'' activation.

In case of a monument installation, the respective non-used hat-rack connections between monument and outer skin are put on stow. It was noticed in production, that the distance between the stowed wire harness and the monument could be too small. This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, this AD requires the modification of the hat rack connectors on stow, and the rerouting of the associated wire harness in case of monument installed in door 2 area.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A330–92–3070, Revision 01, dated January 12, 2009; and A340–92–4073, Revision 01, dated January 13, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of 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 43 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts costs are negligible. Where the service information lists required parts costs that are uncovered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $10,320, or $240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2009–0914; Directorate Identifier 2009–NM–122–AD.

Comments Due Date

(a) We must receive comments by December 3, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 series airplanes; and Airbus Model A340–311, –312, and –313 series airplanes; certificated in any category, all manufacturer

serial numbers on which Airbus modification 48825 has been embodied in production, except those on which Airbus modification 57409 has been embodied in production.

Subject

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

Reason

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

In the door 2 area, the hat-racks are supplied with a basic wire harness which includes ''Oxygen Masks'' activation.

In case of a monument installation, the respective non-used hat-rack connections between monument and outer skin are put on stow. It was noticed in production, that the distance between the stowed wire harness and the monument could be too small. This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, this AD requires the modification of the hat rack connectors on stow, and the rerouting of the associated wire harness in case of monument installed in door 2 area.

Actions and Compliance

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

(1) Within 24 months after the effective date of this AD, modify both the left-hand (L/H) and right-hand (R/H) hat-rack connectors in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3070, Revision 01, dated January 12, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 01, dated January 13, 2009; as applicable, except as provided by paragraph (f)(2) of this AD.

(2) Modifications done before the effective date of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3070 or A340–92–4073, both dated July 10, 2008, as applicable, are acceptable for compliance with the applicable requirements of paragraph (f)(1) of this AD, provided that within 24 months after the effective date of this AD, the ''ADDITIONAL WORK'' specified in Airbus Mandatory Service Bulletin A330–92–3070, Revision 01, dated January 12, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 01, dated January 13, 2009; as applicable; is accomplished in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3070, Revision 01, dated January 12, 2009; or Airbus Mandatory Service Bulletin A340–92–4073, Revision 01, dated January 13, 2009; 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, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0077, dated April 6, 2009; Airbus Mandatory Service Bulletin A330–92–3070, Revision 01, dated January 12, 2009; and Airbus Mandatory Service Bulletin A340–92–4073, Revision 01, dated January 13, 2009; for related information.

Issued in Renton, Washington, on October 5, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–24988 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0913; Directorate Identifier 2009–NM–101–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require inspections for scribe lines in the fuselage skin at lap joints, the splice strap at certain butt joints, the skin or doubler at certain approved repair doublers, and the skin at decal locations; and related investigative and corrective actions if necessary. This proposed AD results from reports of scribe line damage found adjacent to the skin lap joints, decals, and wing-to-body fairings. We are proposing this AD to detect and correct scribe lines, which can develop into fatigue cracks in the skin. Undetected fatigue cracks can grow and cause sudden decompression of the airplane.

DATES: We must receive comments on this proposed AD by December 3, 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: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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–2009–0913; Directorate Identifier 2009–NM–101–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 have received reports indicating that scribe lines have been found by multiple operators on Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. The scribe lines appear to have been made on the skin when sealant was removed as part of preparing the airplane for repainting. One Model 737–700 operator reported scribe lines found around the wing-to-body fairing between stringer 26L and stringer 25R at station (STA) 727D to STA 727E. A second Model 737–700 operator reported six vertical scribe lines up to 42 inches long on the upper aft fuselage between stringer 5R and stringer 9R at STA 847 to STA 887. Another 737–700 operator reported scribe lines along stringer 24L and stringer 24R between STA 178 to STA 500B. The depth of the scribe lines ranged from 0.001 inch to 0.004 inch. The airplanes had accumulated between 595 and 17,571 total flight cycles. No cracks as a result of scribe lines found on Model 737–600, –700, –700C, –800, and –900 airplanes have been reported to Boeing.

Related ADs

This proposed AD is similar to two existing ADs. AD 2006–07–12, amendment 39–14539 (71 FR 16211, March 31, 2006), applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. AD 2007–19–07, amendment 39–15198 (72 FR 60244, October 24, 2007), applies to Boeing Model 757–200, –200PF, and –200CB series airplanes. Those ADs require inspections to detect scribe lines in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas; and related investigative/corrective actions if necessary. Those actions resulted from reports of fuselage skin cracks adjacent to the skin lap joints on airplanes that had scribe lines.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009. That service bulletin describes procedures for inspecting for scribe lines in the fuselage skin at lap joints, the splice strap at certain butt joints, the skin or doubler at certain approved repair doublers, and the skin at decal locations. That service bulletin specifies removing paint and sealant from affected areas before the initial inspection. The service bulletin specifies that the compliance time for the inspections ranges between before accumulating 14,000 total flight cycles plus the first scribe line opportunity, and 75,000 total flight cycles, depending on the inspection location, or within 4,000 flight cycles after the date the service bulletin was issued (whichever occurs later).

That service bulletin specifies related investigative and corrective actions. The related investigative actions include performing repetitive detailed, high frequency eddy current, ultrasonic, and/or ultrasonic phased array inspections of the scribe lines to detect cracks. The repetitive inspection interval ranges between 1,000 and 10,000 flight cycles, depending on the condition found. The corrective actions include repairing scribe lines and cracks. The service bulletin specifies to repair cracks before further flight.

That service bulletin also specifies repairing scribe lines before further flight, except when a limited return to service (LRTS) program for qualifying scribe lines would allow return to service for a limited period before scribe lines are repaired. The LRTS program includes repetitive inspections to detect cracks where scribe lines are found. To qualify for an LRTS program, scribe lines must meet certain criteria based on their depth and location. That service bulletin specifies final repair by using the structural repair manual or contacting Boeing for instructions, which would eliminate the need for the repetitive inspections of the LRTS program. The repetitive intervals for the LRTS program range from 2,500 flight cycles to 10,000 flight cycles after the scribe line is found, depending on the inspection location.

That service bulletin notes that certain inspections would not be necessary under the following conditions:

- The airplane has never been stripped or repainted, or the airplane was stripped or repainted after July 1, 2007.
- The airplane has never had decals installed, or decals were installed after July 1, 2007.
- For each repair, the airplane has never been stripped or repainted since the repair was installed or the repair was installed after July 1, 2007.
- The area under the wing-to-body fairings has never been stripped or repainted or the airplane was stripped or repainted after July 1, 2007.
- No sealant has been removed except in accordance with the specified sealant removal processes given in Appendix A of the service bulletin.

That service bulletin specifies submitting inspection results to Boeing. The service bulletin also provides procedures for addressing scribe lines detected before the initial inspection threshold.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Bulletin.'' The proposed AD would also require sending the inspection results to Boeing.

Differences Between the Proposed AD and Service Bulletin

Where the service bulletin specifies contacting the manufacturer for instructions on how to repair certain conditions, this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the

Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD would affect 782 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection	53	$80	$0	$4,240 per inspection cycle	782	$3,315,680 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 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–2009–0913; Directorate Identifier 2009–NM–101–AD.

Comments Due Date

(a) We must receive comments by December 3, 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 Alert Service Bulletin 737–53A1289, dated January 14, 2009.

Subject

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

Unsafe Condition

(e) This AD results from reports of scribe line damage found adjacent to the skin lap joints, decals, and wing-to-body fairings. The Federal Aviation Administration is issuing this AD to detect and correct scribe lines, which can develop into fatigue cracks in the skin. Undetected fatigue cracks can grow and cause sudden decompression 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.

Inspection

(g) At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009 (''the service bulletin''), except as provided in paragraph (h) of this AD, do detailed external inspections for scribe lines in the fuselage skin at lap joints, the splice strap at certain butt joints, the skin or doubler at certain approved repair doublers, and the skin at decals; and do all applicable related investigative and corrective actions, by accomplishing all actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (i) of this AD.

Note 1: The inspection exceptions described in subparagraphs 1.a. through 1.e. in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, apply to this AD.

Exceptions to Service Bulletin Specifications

(h) Where Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Where Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009, specifies to contact Boeing for appropriate action, accomplish applicable actions using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

Report

(j) At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD: Submit a report of the findings (both positive and negative) of the inspections required by paragraph (g) of this AD. You may use Appendix B of Boeing Alert Service Bulletin 737–53A1289, dated January 14, 2009. Send the report to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. The report must contain, at a minimum, the inspection results, a description of any discrepancies found, the airplane serial number, and the number of flight cycles and flight hours on the airplane. 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 contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(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:* Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590. 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 October 5, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–24986 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2008–0664; FRL–8969–7]

RIN 2060–AP11

Protection of Stratospheric Ozone: New Substitute in the Motor Vehicle Air Conditioning Sector Under the Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act requires the Environmental Protection Agency (EPA) to review alternatives for ozone-depleting substances and to approve of substitutes that do not present a risk more significant than other alternatives that are available. Under that authority, the Significant New Alternatives Policy (SNAP) program of EPA proposes to expand the list of acceptable substitutes for ozone-depleting substances (ODS). The substitute addressed in this proposal is for the motor vehicle air conditioning (MVAC) end-use within the refrigeration and air-conditioning sector. EPA proposes to find HFO–1234yf acceptable, subject to use conditions as a substitute for CFC–12 in motor vehicle air conditioning. The proposed substitute is a non ozone-depleting gas and consequently does not contribute to stratospheric ozone depletion.

DATES: Comments must be received on or before December 18, 2009, unless a public hearing is requested. Comments must then be received on or before January 4, 2010. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on October 29, 2009. If a hearing is held, it will take place on November 3, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0664, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency. EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2008–0664, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0664. 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. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility 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: For further information about this proposed rule, contact Margaret Sheppard, Stratospheric Protection Division, Office of Atmospheric Programs; Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Avenue NW., Washington DC 20460; telephone number (202) 343–9163, fax number, (202) 343–2338; e-mail address at *sheppard.margaret@epa.gov.* Notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at *http://www.epa.gov/ozone/snap/regulations.html.* For copies of the full list of SNAP decisions in all industrial

sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

SUPPLEMENTARY INFORMATION: This proposed action, if finalized, would provide motor vehicle manufacturers and their suppliers an additional refrigerant option for motor vehicle air conditioning (MVAC) systems. The refrigerant discussed in this proposed action is a non ozone-depleting substance.

Table of Contents

I. Section 612 Statutory and Regulatory Background
A. Rulemaking
B. Listing of Unacceptable/Acceptable Substitutes
C. Petition Process
D. 90-day Notification
E. Outreach
F. Clearinghouse
G. EPA's Regulations Implementing Section 612
II. EPA's Proposed Decision on HFO–1234yf
III. SNAP Criteria for Evaluating Alternatives
IV. SNAP Evaluation of HFO–1234yf
A. Atmospheric Effects and Related Health and Environmental Impacts
B. General Population Risks from Ambient Exposure to Compounds with Direct Toxicity and to Increased Ground-Level Ozone
C. Ecosystem Risks
D. Occupational Risks
E. Consumer Risks
F. Flammability
G. Cost and Availability of the Substitute
H. Proposed Conclusion on Overall Impacts on Human Health and the Environment
V. HFO–1234yf MVAC System Proposed Use Conditions
VI. Additional Information Requested
VII. Section 609 Requirements for HFO–1234yf
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
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 that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
IX. References

I. Section 612 Statutory and Regulatory Background

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 and implementing regulations are:

A. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (e.g., chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (e.g., hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

B. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of acceptable substitutes may be found at *http://www.epa.gov/ozone/snap/lists/index.html* and the lists of unacceptable substitutes, acceptable substitutes subject to use conditions and acceptable substitutes subject to narrowed use limits may be found at 40 CFR part 82 subpart G.

C. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

D. 90-day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

E. Outreach

Section 612(b)(1) states that the Administrator shall, where appropriate, seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

F. Clearinghouse

Section 612(b)(4) requires the Agency to maintain a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

G. EPA's Regulations Implementing Section 612

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors. 40 CFR part 82, subpart G. These sectors include: Refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ODS.

For the purposes of SNAP, the Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance in a sector that has historically used ODS. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. CAA section 612(e); 40 CFR 82.176(a). This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at EPA's Stratospheric Ozone Web site at: *http://www.epa.gov/ozone/snap/chron.html.* This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

II. EPA's Proposed Decision on HFO–1234yf

EPA proposes that hydrofluoroolefin (HFO)–1234yf [1] is acceptable as a substitute for CFC–12 [2] in new motor vehicle air conditioning systems (passenger cars and trucks), subject to use conditions. EPA proposes the following use conditions:

- HFO–1234yf MVAC systems must incorporate engineering strategies and/or devices so that leaks into the passenger compartment do not result in HFO–1234yf concentrations at or above the lower flammability limit (LFL) [3] of 6.2% v/v for more than 15 seconds;
- HFO–1234yf MVAC systems must incorporate engineering strategies and/or devices so that leaks into the engine compartment or vehicle electric power source storage areas do not result in HFO–1234yf concentrations at or above the LFL of 6.2% v/v for any period of time;
- HFO–1234yf MVAC systems must incorporate protective devices, isolation and/or ventilation techniques in areas where processes, procedures or upset conditions such as leaks have the potential to generate HFO–1234yf concentrations at or above 6.2% v/v in proximity to hybrid/electric vehicle electric power sources and exhaust manifold surfaces;
- HFO–1234yf MVAC systems must use unique fittings to be identified pursuant to SAE standard J639 and subject to EPA approval;
- HFO–1234yf MVAC systems must include a detailed label identifying the refrigerant and that the refrigerant is flammable;
- HFO–1234yf MVAC systems must have a high-pressure compressor cutoff switch installed on systems equipped with pressure relief devices; and
- Manufacturers must conduct and keep on file Failure Mode and Effect Analysis (FMEA) on the MVAC as stated in SAE J1739.

The proposed decision for HFO–1234yf applies to new MVAC systems only in passenger cars and trucks. We have previously determined that use of flammable refrigerants (which would include HFO–1234yf) in existing equipment as a retrofit is unacceptable (40 CFR part 82, subpart G, appendix B). We seek comment on whether these use conditions should be more protective or should be less protective.

[1] HFO–1234yf is also known as HFC–1234yf, R–1234yf or 2,3,3,3-tetrafluoroprop-1-ene, CAS Reg. No. 754–12–1.

[2] CFC–12 is also known as dichlorodifluoromethane, R–12, or Freon®-12, CAS Reg. No. 75–71–8.

[3] Unless stated otherwise, flammability limits discussed here are by volume.

III. SNAP Criteria for Evaluating Alternatives

To determine whether a substitute is acceptable or unacceptable as a replacement for class I or II compounds, the Agency evaluates substitutes according to the criteria in § 82.180(a)(7). The Agency considers, among other things, toxicity, flammability, potential for occupational and general population exposure, and environmental effects including ozone depletion potential, atmospheric lifetime, impacts on local air quality and climate as well as ecosystem effects of the alternatives.

This proposal reflects additional information on flammable refrigerants in MVAC systems that has become available since the HFC–152a September 2006 proposed rule (71 FR 55140) and 2008 final rule (73 FR 33304), as well as EPA's latest understanding of all the available information. These additional or revised considerations include the increased proportion of new hybrid and electric vehicle sales in the U.S., passenger compartment volume, and improved assumptions for modeling exercises. In this rulemaking, HFO–1234yf risks are considered in relation to the risks associated with HFC–134a and other approved SNAP MVAC alternatives. HFC–134a is the predominant ODS refrigerant substitute used in passenger vehicle MVAC systems. Other SNAP-approved MVAC substitutes have not been implemented by car manufacturers or car air conditioning system manufacturers.

The EPA's SNAP program does not require that new substitutes be found risk-free to be found acceptable. In reviewing the acceptability of proposed substitutes, EPA considers how each substitute can be used within a specific end-use and the resulting risks and uncertainties surrounding potential health and environmental effects.

IV. SNAP Evaluation of HFO–1234yf

In the following section, HFO–1234yf is evaluated in terms of the SNAP criteria defined in § 82.180(a)(7).

A. Atmospheric Effects and Related Health and Environmental Impacts

HFO–1234yf has an ozone-depletion potential (ODP) of nearly zero [4] (Papadimitriou, 2007). By comparison, CFC–12 has an ODP of 1.0 and HFC–134a has an ODP of 0 (WMO, 2006). Generally, the other approved SNAP MVAC substitutes have an ODP of less than 0.2.

The global warming potential (GWP) of HFO–1234yf is 4, based on a 100 year time horizon (Papadimitriou, 2007), compared to a value of 1 for carbon dioxide. For basis of comparison, CFC–12 has a GWP of 10,890 and HFC–134a has a GWP of 1,430 (WMO, 2006). The other SNAP-approved MVAC refrigerants generally have a GWP greater than 1000. HFO–1234yf has an atmospheric lifetime of only 11 days (Papadimitriou, 2007), compared to 100 years for CFC–12 and 14.0 years for HFC–134a. Thus, in terms of direct refrigerant emissions, HFO–1234yf would have a significantly smaller impact on climate compared to the ozone depleting substance it replaces and other common alternatives available in the same end use.

The Agency believes sufficient technical information is available on the ODP and GWP of HFO–1234yf, but the Agency welcomes additional comment on the ODP and GWP values described above. The Agency would give the greatest weight to peer-reviewed, published papers on HFO–1234yf as supporting evidence for discussion on ODP and GWP.

We note that one concern about HFO–1234yf atmospheric effects is trifluoroacetic acid (CF_3COOH, TFA). TFA is produced from atmospheric oxidation of HFO–1234yf. EPA understands that the oxidation of HFO–1234yf yields >90% TFA, which is significantly higher than the yield of TFA from HFC–134a and other approved SNAP MVAC substitutes. TFA is naturally occurring, but at certain levels is toxic to aquatic life forms.

Initial analysis indicates that the projected maximum TFA concentration in rainwater should not result in a significant risk of aquatic toxicity. TFA concentration in rainwater was investigated because it is difficult to predict what the actual TFA concentrations will be. This is because concentrations of environmental contaminants in most fresh water bodies fluctuate widely due to varying inputs and outputs to most ponds, lakes, and streams. Also, use of rainwater TFA concentration as a point of comparison is more conservative than comparing TFA concentrations in water bodies because TFA is expected to be diluted in most freshwater bodies. The exception to this is vernal pools and similar seasonal water bodies that have no significant outflow capacity (ICF, 2009).

After taking into account the nature of HFO–1234yf degradation and the

[4] The National Oceanic and Atmospheric Administration is currently reviewing the ODP of HFO–1234yf and we will place this information in the docket if it becomes available during the course of this rulemaking.

resulting TFA concentration in rainwater; regional precipitation patterns; the geology of closed aquatic systems; and no observed effect concentrations (NOEC) for TFA, TFA production resulting from HFO–1234yf emissions is not expected to pose significant harm to aquatic communities in the near future. Additional research is necessary to determine if significant TFA loading is occurring in vernal pools near major populations (ICF, 2009). EPA is aware of studies to evaluate wet deposition effects that are underway at the National Institute of Advanced Industrial Science and Technology (AIST) based in Japan. Their results on wet deposition were not available at the time of this proposal's drafting, but EPA will consider any relevant findings by AIST that become available in a final version of this regulation and will provide an opportunity for additional public comment if the relevant findings suggest EPA should change its proposed determination.

Concerns about dry deposition of TFA also exist. Initial analysis indicates that it may be somewhat of a concern for photosynthesis (ICF, 2009). EPA is aware of studies to evaluate dry deposition effects that are underway at AIST. Their results on dry deposition were not available at the time of this proposal's drafting, but EPA will consider any relevant findings by AIST that become available in a final version of this regulation and will provide an opportunity for additional public comment if the relevant findings suggest EPA should change its proposed determination. The AIST findings will be posted in the docket (EPA–HQ–OAR–2008–0664) when they are available.

The Agency believes sufficient technical information on the TFA deposition from HFO–1234yf is available for the basis of this proposal; however, the Agency welcomes additional comment on HFO–1234yf's environmental and atmospheric effects. The Agency will give the greatest weight to published, peer-reviewed studies. The Agency requests comment on the impact of increased abundance of TFA resulting from the use of HFO–1234yf as an MVAC refrigerant in the U.S., and the potential impacts of U.S. and worldwide use of HFO–1234yf as an MVAC refrigerant. The National Oceanic and Atmospheric Administration (NOAA) informed EPA that a follow-on study of the Papadimitriou 2007 work is under way. EPA anticipates the results of this study will be published and be made publicly available before the Agency issues a final rule on the acceptability of HFO–1234yf under the SNAP Program. If the study becomes available, EPA will consider that information in determining how to move forward on this proposed determination for HFO–1234yf.

Currently available analysis on the atmospheric and local air quality impacts of HFO–1234yf assumes an emissions rate very similar to HFC–134a. This assumption leads to a very conservative emission rate because it is highly likely HFO–1234yf will have a lower leak rate compared to HFC–134a because HFO–1234yf will cost approximately ten times more than HFC–134a. There will be an economic basis for conserving and preventing the release of HFO–1234yf. But the same logic implies that the market adoption of this alternative may not be high, resulting in even lower total emissions. We seek comment on whether it is appropriate to analyze environmental impacts of HFO–1234yf based on the current emission rate for HFC–134a in MVAC, and if not, what emission rate EPA should use in our environmental analyses.

B. General Population Risks From Ambient Exposure to Compounds With Direct Toxicity and to Increased Ground-Level Ozone

Toxicity:

EPA's New Chemicals Program, mandated by Section 5 of the Toxic Substances Control Act (TSCA), conducted a premanufacture review of HFO–1234yf. This review assessed the potential environmental and human health risks associated with the substance (Docket EPA–HQ–OPPT–2008–0918). Based on test data on HFO–1234yf, EPA has human health concerns for developmental toxicity and lethality via inhalation exposure.

The Workplace Environmental Exposure Limit (WEEL) Committee of the American Industrial Hygiene Association has established a WEEL of 500 parts per million (ppm) by volume on an eight-hour time-weighted average (TWA) for HFO–1234yf. See docket EPA–HQ–OAR–2008–0664 for the WEEL Committee rationale. The Committee established a WEEL of 1,000 ppm by volume on an eight-hour TWA for HFC–134a.

In terms of cardiotoxicity, HFC–134a is a cardiac sensitizer at 75,000 ppm with a no observed adverse effect level (NOAEL) of 50,000 ppm. HFO–1234yf is negative in the cardiac sensitization test at exposures of up to 120,000 ppm. (*See* ''Acute Cardiac Sensitization Study of HFO–1234ze and HFO–1234yf in Dogs'' in docket EPA–HQ–OAR–2008–0664).

Ground-level Ozone:

HFO–1234yf could impact local air quality (LAQ) through formation of ground-level ozone. Photochemical ozone creation potential (POCP) describes a compound's potential to form ground-level ozone. HFO–1234yf has a higher POCP than the predominant MVAC refrigerant, HFC–134a. HFO–1234yf has a POCP comparable to ethylene; ethylene is an alkene. According to the Intergovernmental Panel on Climate Change/Technology and Economic Assessment Panel Special Report, alkenes ''have the potential to significantly influence ozone formation on the urban and regional scales.'' Papadimitriou et al. (2007) indicate that, ''studies are needed to quantify the degradation of [HFO–1234yf] under atmospheric conditions for OH- and Cl-atom-initiated chemistry to fully evaluate the impact of these compounds and their degradation products on climate and air quality.''

An initial assessment says that HFO–1234yf could potentially increase ground level ozone by >1–4% in certain areas, which may affect attainment with the National Ambient Air Quality Standard for ozone (ICF, 2009). The reader should note ground-level ozone formation is highly variable and depends on several factors, such as availability of chemical inputs, and sunlight and heat. EPA notes that HFO–1234yf is defined as a volatile organic compound under Clean Air Act regulations (*see* 40 CFR 51.100(s)) addressing the development of State Implementation Plans (SIPs) to attain and maintain the national ambient air quality standards. The Agency requests comment on the LAQ impacts of HFO–1234yf use as an MVAC refrigerant in the U.S. and globally. The Agency would give the greatest weight to peer-reviewed, published papers for comments on LAQ impacts. As stated earlier, NOAA's follow-on study of HFO–1234yf is expected before the Agency issues a final rule on the acceptability of HFO–1234yf under the SNAP Program. In the meantime, the Agency requests comment on whether a >1–4% increase in ground level ozone is significant.

C. Ecosystem Risks

See discussion under Atmospheric Effects and Related Health and Environmental Impacts.

D. Occupational Risks

Occupational risks could come about during the manufacture of the refrigerant, initial installation of the refrigerant at the car assembly plant or servicing of the MVAC system. The

TSCA New Chemicals Program review of HFO–1234yf determined that significant industrial or commercial worker exposure is unlikely due to CAA section 609 technician training, the use of CAA section 609 certified refrigerant handling equipment, and other protective measures. Therefore, the proposed manufacture, processing, and use of HFO–1234yf are not expected to present an unreasonable risk to workers. More details can be found at the New Chemicals Program's docket for HFO–1234yf, EPA–HQ–OPPT–2008–0918, and in the memorandum, ''Risk Assessment: P070601 Reflecting Deliberations and Decisions from the 3/4/09 Dispo[sition] Meeting'' in dockets EPA–HQ–OAR–2008–0664 and EPA–HQ–OPPT–2008–0918.

In regards to flammability, with proper mitigation and training, the frequency of exposure to flammable HFO–1234yf concentrations in service situations can be managed. Based on feedback from certified MVAC service technicians, EPA believes that the flammability potential of HFO–1234yf is within the range of other substances that automotive service technicians encounter routinely (See docket EPA–HQ–OAR–2004–0488–0017). Training, mitigation, and limiting the frequency of exposure can reduce any potential risks to the technicians. Input from technicians confirms this perspective. Some car manufacturers have suggested that new training for HFO–1234yf should be required for all MVAC technicians. EPA requests comment on whether additional training for service technicians on HFO–1234yf should be required so that they are knowledgeable about the different hazards associated with working on HFO–1234yf MVAC systems compared to the two systems currently in use—i.e., CFC–12 or HFC–134a systems. Any specific training requirements would be adopted in a follow-up Section 609 rulemaking. At this point, EPA recommends, but does not propose to require, additional training and requests input on the need for required training for persons using HFO–1234yf in an MVAC service/maintenance/disposal scenario.

E. Consumer Risks

Risks to consumers as vehicle occupants have been evaluated, in the context of HFO–1234yf's flammability and toxicity.

Based on American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 34 testing, HFO–1234yf's lower flammability limit (LFL) is 6.2% and upper flammability limit is 12.3% (Gradient, 2008), making this refrigerant less flammable than HFC–152a, the only flammable SNAP-approved MVAC refrigerant. Depending on the charge size of an HFO–1234yf MVAC system, which can range from as little as 400 grams to as much as 1600 grams (ICF, 2008a), it is possible in a worst case scenario to reach a flammable concentration of HFO–1234yf inside the passenger compartment.

In terms of toxicological concerns, the TSCA New Chemicals Program review of HFO–1234yf determined that potential consumer (passenger) exposure from refrigerant leak into the passenger compartment of a vehicle is not expected to present an unreasonable risk. However, consumer exposure from filling, servicing, or maintaining MVAC systems without professional training and the use of CAA Section 609 certified equipment may cause serious health effects. Therefore, to prevent this risk EPA is also promulgating a Significant New Use Rule (SNUR) under section 5(a)(2) of TSCA (docket EPA–HQ–OPPT–2008–0918). This SNUR would require submission of a Significant New Use Notice to EPA at least 90 days before commencing an activity that is designated as a significant new use of HFO–1234yf.

F. Flammability

The proposed upper limit of occupant exposure to HFO–1234yf protects against the possibility of flammability. It is important to note that when burned or exposed to high heat, HFO–1234yf like all fluorocarbons, including CFC–12 and HFC–134a, forms acid byproducts including hydrofluoric acid (HF)—a severe respiratory irritant.[5] The Occupational Safety and Health Administration (OSHA) has set a Permissible Exposure Limit (PEL)—8-hour occupational exposure limit—for HF at 3 ppm which is the upper allowable limit for worker exposure. Passenger exposure to HF could occur as a result of a leak in the presence of an ignition source. EPA's approach in setting use conditions is to prevent any fire risk associated with HFO–1234yf use in MVAC systems, which would also prevent any potential passenger exposure to HF. EPA understands that there is work currently underway that examines the issue of pre-ignition HF formation. If those studies indicate the potential for significant pre-ignition HF formation, EPA will consider that information in determining how to move forward with this proposed rule. Additionally, EPA welcomes any comment on that study or other studies of which EPA is not aware that address the potential for pre-ignition HF formation.

Flammable Concentrations Inside the Passenger Compartment

SAE International commissioned a risk assessment of HFO–1234yf in MVAC systems (Gradient, 2008) based on the analytical framework developed by EPA and the U.S. Army in a 2006 alternative refrigerant risk analysis (EPA–HQ–OAR–2004–0488–0025.2). The risk assessment incorporated the results of computational fluid dynamic (CFD) modeling (by DuPont) of an HFO–1234yf leak into the passenger compartment. DuPont conducted a limited assessment of refrigerant leakage into the passenger compartment by modeling the first 200 seconds of a leak into the passenger compartment. Based on their analysis, at least one of their simulations (idle vehicle, low fan, 0.5mm orifice leak, and recirculation mode), led to exceeding the HFO–1234yf LFL inside the passenger compartment. To supplement these results, SAE International updated the modeling results with field test assessments of leaking refrigerant into the passenger compartment of Renault/PSA/Fiat and General Motors medium and small size cars. The test results show that there are some scenarios where the LFL was exceeded (Gradient, 2009). According to the SAE International risk assessment report, there is ''a potential ignition hazard if a smoking-related ignition source is present'' (Gradient, 2008). However, the report references a separate field study performed by Exponent where an experimental release of HFO–1234yf was released into the passenger and engine compartment of a large vehicle, a 1997 Ford Crown Victoria (Exponent, 2008). In this field study, tested releases of HFO–1234yf did not produce concentrations above the LFL. However, given the fact that flammable conditions can come about in the passenger compartment, particularly in medium and small size cars, the Agency believes it is prudent to propose a use condition that addresses a possible ignition hazard.

The Agency requests public comment on the SAE International/DuPont and Exponent reports. Specifically, the Agency requests comment on the appropriateness of the simulated charge size that was used by each report. The SAE International/DuPont report simulated a 2001 Ford Crown Victoria with a 691 gram HFO–1234yf charge. The Exponent report used a 1997 Ford Crown Victoria with a charge size of 693

[5] These decomposition products have a sharp, acrid odor even at concentrations of only a few parts per million.

grams. The 1997 and 2001 Ford Crown Victorias were originally designed with approximately 966 gram and 1097 grams HFC–134a charge size systems (MACS, 2005). Honeywell presentations have indicated the HFO–1234yf charge size is 90–95% of a HFC–134a charge size (Honeywell, 2008). Based on the original refrigerant charge size of these Crown Victorias, the HFO–1234yf charge sizes, in both simulations, are not consistent with the 90–95% HFC–134a charge sizes described in Honeywell presentations and the Crown Victorias are undercharged. Charge size is an important element in determining the probability of a flammable concentration. EPA requests comment on whether the charge sizes used in the DuPont and Exponent simulations are consistent with the actual charge sizes that would need to be used in MVAC for these vehicles.

The Agency also requests comment on the use of a large-size car as a worst-case car scenario for a MVAC risk assessment. Based on an analysis done in 2004–2005, the EPA/U.S. Army risk assessment (Docket No. EPA–HQ–OAR–2004–0488–0025.2) concluded large passenger cars provided the highest ratio of refrigerant charge to interior compartment volume, and large passenger cars were broadly representative of the world fleet. Since that analysis was performed, there is data to indicate the sales of small cars have increased, and such sales are likely to continue to increase given a manufacturing shift towards smaller cars (ICF, 2008b). A recent analysis showed higher ratios of refrigerant charge to interior compartment volume in small trucks and two-seaters, compared to the large car used in SAE's risk assessment (ICF, 2008a). A higher ratio of refrigerant charge to interior compartment volume could lead to more occurrences of flammable concentrations.

Flammable Concentrations in the Engine Compartment

According to the SAE International report, ''the highest value measured in the engine compartment (87,000 ppm) suggests a potential ignition hazard'' (Gradient, 2008). Although an engine compartment field test suggested that it was not possible to ignite HFO–1234yf (Dupont 2008), temperatures that could ignite the refrigerant exist on the exhaust manifold. Most car manufacturers cover the exhaust manifold with a heat shield, but this is not a requirement. EPA requests comment on the proposed use condition that requires protective devices under the vehicle hood to avoid any flammable concentrations of refrigerant coming into the vicinity of hot exhaust manifold surfaces.

Hybrid and electric vehicle sales in the U.S. have dramatically increased over the past decade (ICF, 2008b). To address this change in the market, EPA considered the potential for another ignition source from the electric power source in hybrid and electric cars that is not present with gasoline-only vehicles. According to DuPont and Honeywell's *Guidelines for Use and Handling of HFO–1234yf,* ''isolation techniques or other suitable methods should be used to prevent battery and power system sparks/arc. In areas where processes, procedures or upset conditions such as leaks have the potential to generate flammable HFO–1234yf vapor-in-air concentrations in proximity to hybrid vehicle electric power sources, isolation and/or ventilation should be used.'' (DuPont/Honeywell, 2008).

In addition, current hybrid vehicles with HFC–134a MVAC systems use polyolester (POE) oil as a system lubricant, primarily because polyalkylene glycol (PAG) oils are conductive and can lead to shorts. It is not clear if HFO–1234yf MVAC systems can work with the POE oil that is needed for hybrid vehicles. The EPA requests comment on whether the flammability of HFO–1234yf combined with PAG/POE oils may create a larger concern under the hood of hybrid and electric vehicles.

EPA is aware of SAE International activities to develop a standard on specific risk mitigation strategies to avoid flammable concentrations under the hood. An excerpt from the latest draft of a standard that covers this topic is available in the docket. EPA requests comment on using such an SAE J standard as a use condition to protect against flammable concentrations under the hood. If SAE adopts a standard that reflects a different intent than in the current draft and if EPA determines to include such a different standard as a use condition, EPA would consider whether further comment is needed before it issued a final rule with that use condition.

Other Flammable Refrigerants and Risk Mitigation

Hydrocarbon refrigerants are unacceptable (prohibited) in MVAC systems under the SNAP program and are specifically prohibited in several states. Hydrocarbons or hydrocarbon blends must not be used in HFO–1234yf MVAC systems.

The use conditions described in this action are specific to HFO–1234yf and do not apply to other flammable refrigerants. HFO–1234yf is less flammable and has a higher LFL than HFC–152a, and the proposed use conditions for HFO–1234yf would not be adequate for HFC–152a. However, the interior passenger compartment risk mitigation strategies described in the HFC–152a proposed and final rules (71 FR 55140 and 73 FR 33304, respectively) can be protective risk mitigation strategies for HFO–1234yf. EPA refers to the previous discussions on HFC–152a risk mitigation strategies for manufacturers to consider when deciding what risk mitigation strategies might be used if HFO–1234yf is found acceptable subject to use conditions.

G. Cost and Availability of the Substitute

Definitive costs for the refrigerant have not been shared with the Agency. Based on estimates from Honeywell and DuPont, the cost of HFO–1234yf will be, at least initially, approximately $40–60/pound (Weissler, 2008). The cost of the refrigerant will depend on several factors, including, but not limited to, how much refrigerant will be available for sale, the quality of the refrigerant, and where the refrigerant is manufactured. The cost of HFO–1234yf will likely be more than HFC–134a because the HFO–1234yf manufacturing process requires more energy and more steps than HFC–134a.

The manufacturers of HFO–1234yf state the chemical can be available when the market requires it. At the moment there are no dedicated HFO–1234yf manufacturing plants.

H. Proposed Conclusion on Overall Impacts on Human Health and the Environment

On the whole, EPA proposes that the conditioned use of HFO–1234yf does not present a significantly larger risk to human health and the environment compared to HFC–134a, the predominant ODS refrigerant substitute in passenger vehicle MVAC systems and other SNAP-approved MVAC refrigerant alternatives, and in many cases likely poses less risk. Use conditions are necessary to address the flammability concerns associated with use of HFO–1234yf. If it is determined that there are possible atmospheric effects of HFO–1234yf, those would be controlled by Clean Air Act Section 608 and Section 609 regulatory requirements that prohibit the venting, or release, of refrigerant during the service, maintenance and disposal of refrigeration and A/C equipment. EPA welcomes comment on this proposal; the Agency prefers peer-reviewed,

published papers for supporting documentation on comments concerning technical issues.

The conditions we are proposing for the safe use of HFO–1234yf are outlined below.

V. HFO–1234yf MVAC System Proposed Use Conditions

Use Conditions for HFO–1234yf

EPA proposes to find HFO–1234yf acceptable with use conditions in new MVACs as a substitute for CFC–12. This proposed determination is limited to MVAC systems on passenger cars and light-duty trucks; this proposed determination does not include any other MVAC systems, including those on buses, trains, boats, off-road equipment, or other vehicles. The submission did not specifically request use in these other MVAC systems and the risks associated with these MVAC systems have not been evaluated.

EPA proposes to find HFO–1234yf acceptable with the following use conditions:

- HFO–1234yf MVAC systems must incorporate engineering strategies and/or devices so that leaks into the passenger compartment do not result in HFO–1234yf concentrations at or above the lower flammability limit (LFL) of 6.2% v/v for more than 15 seconds;
- HFO–1234yf MVAC systems must incorporate engineering strategies and/or devices so that leaks into the engine compartment or vehicle electric power source storage areas do not result in HFO–1234yf concentrations at or above the LFL of 6.2% v/v for any period of time;
- HFO–1234yf MVAC systems must incorporate protective devices, isolation and/or ventilation techniques in areas where processes, procedures or upset conditions such as leaks have the potential to generate HFO–1234yf concentrations at or above 6.2% v/v in proximity to hybrid/electric vehicle electric power sources and exhaust manifold surfaces;
- HFO–1234yf MVAC systems must use unique fittings to be identified pursuant to SAE standard J639 and subject to EPA approval;
- HFO–1234yf MVAC systems must include a detailed label identifying the refrigerant and that the refrigerant is flammable;
- HFO–1234yf MVAC systems must have a high-pressure compressor cutoff switch installed on systems equipped with pressure relief devices; and
- Manufacturers must conduct and keep on file Failure Mode and Effect Analysis (FMEA) on the MVAC as stated in SAE J1739.

EPA requests public comment on the proposed use conditions for HFO–1234yf. Amongst other topics, EPA requests comment on whether interior passenger compartment limits to HFO–1234yf should apply only when the vehicle ignition is 'on.'

General SNAP MVAC Use Conditions

On October 16, 1996, EPA promulgated a final rule (61 FR 54029) establishing certain conditions on the use of any refrigerant used as a substitute for CFC–12 in MVAC systems (appendix D to subpart G of 40 CFR part 82). That rule provides that EPA would list new refrigerant substitutes in future notices of acceptability and all such refrigerants would be subject to the use conditions stated in that rule. Therefore, EPA is establishing a use condition that unique fittings must be identified pursuant to SAE standard J639 adopted in 2009 and approved by EPA.

VI. Additional Information Requested

The Agency seeks comments on topics related to HFO–1234yf that are beyond the scope of this Section 612 proposed rulemaking regarding use of HFO–1234yf in new MVAC systems, but which could be relevant to future actions on HFO–1234yf as a substitute refrigerant. Please send information on any of the following issues to Margaret Sheppard, *sheppard.margaret@epa.gov.*

Retrofit Use of HFO–1234yf

The Honeywell submission requested SNAP review of HFO–1234yf in new MVAC applications only. Honeywell did not petition the Agency to review retrofit use of HFO–1234yf. The Agency has not fully evaluated the safety issues associated with using HFO–1234yf to service existing CFC–12 or HFC–134a designed MVAC systems. EPA rules prohibit the use of flammable refrigerants in retrofit systems. 40 CFR part 82, subpart 2, App. B (61 FR 54029). Any person interested in using HFO–1234yf in retrofit systems would need to petition EPA to change the existing unacceptable determination. Such an option would require a separate SNAP submission and evaluation by EPA. EPA suspects that car manufacturers are the best qualified, and likely the only qualified entity to undertake such an application given the complexities of going to HFO–1234yf. The Agency requests comment on whether retrofit kits can effectively meet the requirements identified in this proposal for new MVAC systems and if retrofits have a detrimental impact on the MVAC system fuel efficiency. The Agency also specifically requests comments from car manufacturers on retrofitting existing MVAC systems to HFO–1234yf.

Retrofitting HFO–1234yf MVAC Systems to Other Alternative Refrigerants

Individuals, service shops, or manufacturers might consider refilling or charging MVAC systems designed for HFO–1234yf with another refrigerant. The Agency has not evaluated the safety issues associated with retrofitting HFO–1234yf MVAC systems with other MVAC refrigerants previously approved under SNAP. Because other refrigerants may be less expensive, the Agency is concerned that consumers may consider retrofitting HFO–1234yf systems to use other refrigerants. The use conditions proposed for HFO–1234yf are specific to the properties of this chemical, and would not be protective of fire hazards that may come about from, for example, hydrocarbon refrigerant (HCR) that is more flammable. HCRs are more flammable than HFO–1234yf. Besides the safety concerns of retrofitting to another refrigerant, the practice could lead to increased refrigerant emissions because of materials compatibility or/and leakage due to hose permeation.

This practice may come about if the price of HFO–1234yf is high, or if there is limited supply of HFO–1234yf. EPA requests comments on this type of retrofitting, and provisions that need to be made to address this issue, particularly in the context of SNAP's general requirement for unique fittings for each unique SNAP listed refrigerant.

VII. Section 609 Requirements for HFO–1234yf

Service equipment, technician certification and end-of-life disposal specifications will be addressed in a follow-on rulemaking(s) under Section 609 of the Clean Air Act.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' It raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Burden is defined at 5 CFR 1320.3(b). This proposed rule is an Agency determination. It contains no new requirements for reporting. The only recordkeeping requirement involves customary business practice. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0226 (EPA ICR No. 1596.05). This Information Collection Request (ICR) included five types of respondent reporting and record keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record keeping for substitutes acceptable subject to use restrictions, and record-keeping for small volume uses. This proposed rule requires minimal record-keeping of studies done to ensure that MVAC systems using HFO–1234yf meet the requirements set forth in this rule. Because it is customary business practice that automotive systems manufacturers and automobile manufacturing companies conduct and keep on file failure mode and effect analysis (FMEA) on any potentially hazardous part or system, we believe this requirement will not impose an additional paperwork burden.

C. Regulatory Flexibility Act (RFA)

The 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 rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; for NAICS code 336111 (Automobile manufacturing), it is <1000 employees; for NAICS code 336391 (Motor Vehicle Air-Conditioning Manufacturing), it is <750 employees; (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, we certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The requirements of this proposed rule impact car manufacturers and car air conditioning system manufacturers only; none of these businesses qualify as small entities. Additionally, car manufacturers and car air conditioning system manufacturers are not mandated to move to HFO–1234yf MVAC systems. EPA is simply listing HFO–1234yf as an acceptable alternative with use conditions in new MVAC systems. This rule allows the use of this alternative to ozone depleting substances in the MVAC sector and outlines the conditions necessary for safe use. By approving this refrigerant under SNAP, EPA provides additional choice to the automotive industry which, if adopted, would reduce the impact of MVACs on the global environment. This rulemaking does not mandate the use of HFO–1234yf as a refrigerant in new MVACs.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies directly to entities that manufacture MVAC systems with the proposed substitute, and not to governmental entities. This proposed rule does not mandate a switch to this substitute, but rather adds to the list of available substitutes from which a manufacturer may choose; consequently, there is no direct economic impact on entities from this rulemaking. Also, production-quality HFO–1234yf MVAC systems are not manufactured yet. Consequently, no change in business practice is required by this proposed rule. This action provides additional technical options allowing greater flexibility for industry in designing consumer products. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As noted above, this proposed regulation would not apply to any governmental entity. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

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 proposal 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 regulation applies directly to entities that manufacture MVAC systems with the proposed substitute and not to governmental entities. 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). This proposed rule does not significantly or uniquely affect one or more Indian tribes, the relationship between the Federal Government and Indian tribes, or the distribution of power and responsibilities between the Federal Government and Indian tribes because this regulation applies directly to entities that manufacture MVAC systems with the proposed substitute and not to governmental entities. 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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in Section IV of this proposed rule.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to HFO–1234yf.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would impact manufacturing alternative MVAC systems. Preliminary information indicates that these new systems will have similar fuel efficiency compared to currently available MVAC systems. Therefore, we conclude that this rule is not likely to have any adverse effects on energy supply, distribution or use.

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, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. EPA proposes to use the SAE International standard J639, which addresses requirements for safety and reliability for HFO–1234yf systems. SAE International is the international standard setting body for motor vehicle requirements. SAE International standards are globally recognized and adopted by all major car manufacturers and system suppliers. These standards can be obtained from *http://www.sae.org/technical/standards/.*

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify other 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 (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 it increases the level of environmental protection for all affected populations; HFO–1234yf is a non ozone-depleting substance with a low GWP. Based on the toxicological and atmospheric work described earlier, HFO–1234yf will not have any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This NPRM proposes to require specific use conditions for MVAC systems, if car manufacturers chose to make MVAC systems using this low GWP refrigerant alternative.

IX. References

The documents below are referenced in the preamble. All documents are located in the Air Docket at the address listed in section titled ''**ADDRESSES**'' at the beginning of this document. Unless specified otherwise, all documents are available in Docket ID No. EPA–HQ–OAR–2008–0664 at *http://www.regulations.gov.*

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List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: October 13, 2009.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

2. The first table in Appendix B to Subpart G of Part 82 is amended by adding one new entry to the end of the table to read as follows:

Appendix B to Subpart G of Part 82—Substitutes Subject to Use Restrictions and Unacceptable Substitutes

REFRIGERANTS-ACCEPTABLE SUBJECT TO USE CONDITIONS

Application	Substitute	Decision	Conditions	Comments
*	*	*	*	*
CFC–12 Automobile Motor Vehicle Air Conditioning (New equipment in passenger cars and trucks only).	HFO–1234yf as a substitute for CFC–12.	Acceptable subject to use conditions.	Engineering strategies and/or devices must be incorporated into the system such that leaks into the free space[1] of the passenger compartment do not result in HFO–1234yf concentrations of 6.2% v/v or above in any part of the free space[1] inside the passenger compartment for more than 15 seconds.	Additional training for service technicians recommended.
			Engineering strategies and/or devices must be incorporated into the system such that leaks into the engine compartment or vehicle electric power source storage areas do not result in HFO–1234yf concentrations of 6.2% v/v or above for any period of time.	Observe Pre-manufacture Notice (PMN) regulatory decision.
			HFO–1234yf MVAC systems must incorporate protective devices, isolation and/or ventilation techniques in areas where processes, procedures or upset conditions such as leaks have the potential to generate HFO–1234yf concentrations at or above 6.2% v/v in proximity to exhaust manifold surfaces and hybrid/electric vehicle electric power sources.	
			Manufacturers must adhere to all the safety requirements listed in the Society of Automotive Engineers (SAE) Standard J639 (adopted 2009), including unique fittings and flammable refrigerant warning label and high-pressure compressor cutoff switch and pressure relief devices.	
			Manufacturers must conduct and keep on file Failure Mode and Effect Analysis (FMEA) on the MVAC as stated in SAE J1739 (adopted 2009).	

[1] Free space is defined as the space inside the passenger compartment excluding the space enclosed by the ducting in the HVAC module.

* * * * *

[FR Doc. E9–25106 Filed 10–16–09; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

RIN 0648–AV15

Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notification of extension of public comment period.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are issuing this notice to advise the public that NMFS is extending the public comment period for proposed regulations under the Endangered Species Act and Marine Mammal Protection Act to prohibit vessels from approaching killer whales within 200 yards and from parking in the path of whales for vessels in inland waters of Washington State. The proposed regulations would also prohibit vessels from entering a conservation area during a defined season. The proposed rule was published July 29, 2009, opening a 90-day public comment period and noticing two public meetings. In response to requests from the public, on September 17, 2009, we published a notice in the **Federal Register** announcing an additional public meeting. We are issuing this notice to announce an 80-day extension of the public comment period in response to requests to provide more time for the public to review the proposed regulation and provide comments.

We recognize that by extending the public comment period, we will not have sufficient time to issue a final rule prior to the 2010 summer boating season. We continue to believe that it is important to address the adverse effects of vessel traffic on killer whales in the near future. In light of the requests we have received for an extension of the comment period, however, we believe additional public outreach will enhance both NMFS' understanding of public concerns and the public's understanding of the basis for our

proposal, and it will allow time for cooperative efforts to refine the proposal. We will work toward adoption of a final rule prior to the 2011 summer boating season. We will consider all comments and information received during the comment period in preparing a final rule.

DATES: Written or electronic comments on the proposed rule and draft Environmental Assessment (EA) from all interested parties are encouraged and must be received no later than January 15, 2010. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

ADDRESSES: Comments on the proposed rule, draft EA and any of the supporting documents can be submitted by any of the following methods:

- *E-mail: orca.plan@noaa.gov.*
- *Federal e-rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Assistant Regional Administrator, Protected Resources Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115.

The draft EA and other supporting documents are available on Regulations.gov and the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/.*

You may submit information and comments concerning this Proposed Rule, the draft EA, or any of the supporting documents by any one of several methods identified above. We will consider all comments and information received during the comment period in preparing a final rule. 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: Lynne Barre, Northwest Regional Office, 206–526–4745; or Trevor Spradlin, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, NMFS proposed regulations under the Endangered Species Act and Marine Mammal Protection Act to prohibit vessels from approaching killer whales within 200 yards and from parking in the path of whales for vessels in inland waters of Washington State (74 FR 37674). The proposed regulations would also prohibit vessels from entering a conservation area during a defined season. Certain vessels would be exempt from the prohibitions. The purpose of the action is to protect killer whales from interference and noise associated with vessels. In the final rule announcing the endangered listing of Southern Resident killer whales NMFS identified disturbance and sound associated with vessels as a potential contributing factor in the recent decline of this population. The Recovery Plan for Southern Resident killer whales calls for evaluating current guidelines and assessing the need for regulations and/or protected areas (73 FR 4176; January 24, 2008). We developed the proposed rule after considering comments submitted in response to an Advance Notice of Proposed Rulemaking (72 FR 13464; March 22, 2007) and preparing a draft environmental assessment.

Dated: October 13, 2009.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–25063 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0907231161–91189–01]

RIN 0648–AY08

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Longline and Purse Seine Fisheries in the Eastern Pacific Ocean in 2009, 2010, and 2011

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act of 1950 (Act) to implement a decision of the Inter-American Tropical Tuna Commission (IATTC). That decision requires, among other things, that members of the IATTC, including the United States, ensure that catches in the eastern Pacific Ocean (EPO) of bigeye tuna (*Thunnus obesus*) by longline vessels greater than 24 meters in length do not exceed specified levels in each of the years 2009, 2010, and 2011, and that purse seine vessels class sizes 4–6 do not fish in the EPO during an established closure period. This action is necessary for the United States to satisfy its obligations under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna (Convention), to which it is a Contracting Party.

DATES: Comments must be submitted in writing by November 9, 2009. A public hearing will be held at 9 a.m. to 12 p.m. PDT, October 21, 2009, Long Beach, CA.

ADDRESSES: You may submit comments on this proposed rule, identified by 0648–AY08, the Initial Regulatory Flexibility Analysis (IRFA), or the draft environmental assessment (EA) prepared for the proposed rule by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal, at *http://www.regulations.gov.*
- *Mail:* Rod McInnis, Regional Administrator, NMFS Southwest Regional Office (SWR), 501 W. Ocean Blvd, Suite 4200, Long Beach, Ca 90802. Include the identifier ''0648–AY08'' in the comments.
- *Public hearing:* The hearing will be held at 501 W. Ocean Boulevard, Suite 4200, Long Beach, Ca 90802. The public may also participate in the public hearing via conference line: 888–989–6480; participant passcode: 29574.

Instructions: All comments received are part of the public record and generally will be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter ''N/A'' in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the EA prepared under the authority of the National Environmental Policy Act and the IRFA are available at *http://swr.nmfs.noaa.gov/* or may be obtained from Rod McInnis, Regional Administrator, NMFS SWR (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, NMFS SWR, 562–980–4036.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible at *http://www.gpoaccess.gov/fr*.

Background on the Convention and the IATTC

The Convention entered into force in May 1949. The full text of the Convention is available at: *http://www.iattc.org/PDFFiles/IATTC__convention__1949.pdf*. The Convention Area includes the waters bounded by the coast of the Americas, the 40 N. and 40 S. parallels, and the 150 W. meridian. The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS, and has provisions related to non-target, associated, and dependent species in such fisheries.

The IATTC, established under the Convention, is comprised of the Members, including High Contracting Parties to the Convention and fishing entities that have agreed to be bound by the regime established by the Convention. Other entities that participate in the IATTC include Cooperating Non-Parties, Cooperating Fishing Entities, and Regional Economic Integration Organizations. Cooperating Fishing Entities participate with the authorization of the High Contracting Parties with responsibility for the conduct of their foreign affairs. Cooperating Non-Parties are identified by the IATTC on a yearly basis. In accepting Cooperating Non-Party status, such States agree to implement the decisions of the IATTC in the same manner as Members.

The current Members of the IATTC are Colombia, Costa Rica, Ecuador, El Salvador, France, Guatemala, Japan, Mexico, Nicaragua, Panama, Peru, Republic of Korea, Spain, United States, Vanuatu, and Venezuela. The current Cooperating Non-Parties, Cooperating Fishing Entities and Regional Economic Integration Organization are Belize, Canada, China, Cook Islands, Kiribati, Chinese Taipei, and the European Union.

International Obligations of the United States under the Convention

As a Contracting Party to the Convention and a Member of the IATTC, the United States is legally bound to implement the decisions of the IATTC. The Act (16 U.S.C. 951–961 and 971 *et seq.*) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard (USCG) is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the IATTC. The authority to promulgate regulations has been delegated to NMFS.

IATTC Decisions Regarding Longline and Purse Seine Fisheries

At its Eightieth Meeting, in June 2009, the IATTC adopted the Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean in 2009–2011 (Resolution C–09–01) related to bigeye and yellowfin tunas (*Thunnus albacares*) in the EPO. The resolution, available with other decisions of the IATTC at *http://www.iattc.org/ResolutionsActiveENG.htm*, places certain obligations on the IATTC's High Contracting Parties, Cooperating Non-Parties, Cooperating Fishing Entity, and Regional Economic Integration Organization (collectively, CPCs). With respect to bigeye tuna, the resolution is based in part on the recommendations and analysis of IATTC scientific staff and the 2009 stock assessment completed by IATTC staff. The assessment verified that the stock of bigeye tuna in the EPO is experiencing a fishing mortality rate greater than the rate associated with average maximum sustainable yield, and the spawning stock biomass is below that which supports average maximum sustainable yield, thus the stock is subject to overfishing and is overfished. The Convention calls for the IATTC to adopt measures designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors. Accordingly, Resolution C–09–01 has the objective of reducing, over the period 2009–2011, the fishing mortality rate for bigeye tuna in the EPO. It is estimated that the fishing mortality of bigeye tuna would be reduced by 19% in 2009, 20% in 2010, and 24% in 2010 based on averages over the 1995–2003 timeframe.

Among other provisions, the resolution establishes specific catch limits for bigeye tuna captured by longline vessels over 24 meters in length (large-scale longline vessels) for the years 2009, 2010, and 2011. The limits are prescribed relative to catches made during specified baseline periods, and commensurate with the estimated reductions in catch of bigeye tuna in the purse seine fishery with the implementation of the closure period. China, Japan, Korea, and Chinese Taipei, the countries with the highest levels of bigeye tuna catch in longline fisheries in the EPO, have specific catch levels for 2009 and 2010. Other CPCs must ensure their annual longline catches of bigeye tuna in the EPO during 2009–2010 do not exceed the greater of 500 metric tons (mt) or their respective catches of bigeye tuna in 2001. The U.S. catch of bigeye tuna in longline fisheries in the EPO for 2001 was only about 150 mt; therefore, the U.S. longline catch limit of bigeye tuna would be 500 mt in the EPO for 2009 and 2010. For 2011, the total annual longline quotas of bigeye tuna in the EPO would be adjusted to be commensurate with the measures adopted for purse seine vessels by the Commission in 2011.

IATTC Resolution C–09–01 also establishes a purse seine closure for all purse seine vessels class sizes 4–6 in the EPO for a period of 59 days in 2009, 62 days in 2010, and 73 days in 2011. Each CPC must choose one of two periods in each year as follows: for 2009, August 1 to September 28, or November 21 to January 18; for 2010, July 29 to September 28, or November 18 to January 18; and for 2011, July 18 to September 28, or November 7 to January 18. In 2011, the results of the conservation measures adopted will be evaluated by the Commission, in the context of the results of the stock assessments for 2011 and, depending on the conclusions reached by the scientific staff of the Commission, the period of duration of the closure for that year shall be ratified or adjusted. Notwithstanding theses provisions, purse seine vessels of IATTC capacity class size 4 (between 182 and 272 mt carrying capacity) will be able to make one single fishing trip of up to 30 days duration during the specified closure periods, provided that any such vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program (AIDCP).

IATTC Resolution C–09–01 also establishes a closure for all purse seine vessels class sizes 4–6 within the area between 96° and 110° W. longitude and between 4° N. and 3° S. latitude from 0000 hours on September 29 to 2400 hours on October 29 for 2009, 2010, and 2011 (also known as ''el corralito'' closure).

Furthermore, purse seine vessels would continue to be required to retain on board and then land all skipjack (*Katsuwonus pelamis*), bigeye, and yellowfin tuna caught; however, there would be a minor change to the existing regulations at 50 CFR 300.24(e) and 300.25(e)(1) that would amend the exception to the tuna retention measure and make the regulations only applicable to purse seine vessels class sizes 4–6. Tuna would not need to be

retained for fish considered unfit for human consumption for reasons other than size, and the single exemption of this would be the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set. Currently the language is slightly different than this but with similar intent, so the amendment would serve to make the regulatory language consistent with IATTC Resolution C–09–01, but would most likely not result in any changes to the purse seine fishery. The efficacy and impacts of the tuna retention requirement will be reviewed at the annual Commission meeting in 2010 and the Commission will decide whether to continue it.

Proposed Action

Restrictions in the Longline Fishery The bigeye tuna limits established in Resolution C–09–01 are termed ''catch'' limits. The annual limit on harvests by large-scale longline vessels covers all bigeye tuna that is retained on board, as opposed to all bigeye tuna caught. Accordingly, the proposed rule would establish a limit of 500 mt of bigeye tuna that is caught and retained. The limit would have the purpose of reducing fishing mortality of EPO bigeye tuna. Once NMFS determines in any of the years 2009, 2010, or 2011 that the limit is expected to be reached by a specific future date in that year, NMFS would publish a notice in the **Federal Register** announcing that the limit is expected to be reached and that specific restrictions will be effective on that particular date until the end of the calendar year. NMFS would publish the notice at least seven calendar days before the effective date of the restrictions to provide fishermen advance notice of the restrictions. NMFS would also endeavor to make publicly available, such as on a website, regularly updated estimates and/or projections of bigeye tuna landings in order to help fishermen plan for the possibility of the limit being reached. In Resolution C–09–01, the IATTC has reserved the option of reversing or amending its adoption of the bigeye tuna catch limits in longline fisheries at its regular annual session in June 2011. If such a decision occurs, NMFS will take appropriate action to rescind any closed areas that are established by regulation.

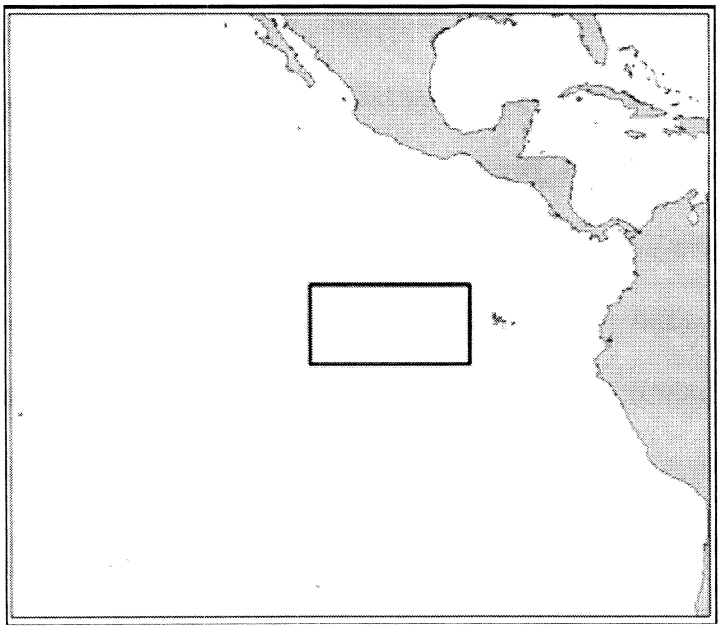
Starting on the announced date and extending through the last day of that calendar year, it would be prohibited to use a U.S. fishing vessel greater than 24 meters in length to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear. Bigeye tuna caught incidentally in the longline fishery starting on the announced date (e.g., in the shallow-set longline fishery targeting swordfish) would be required to be discarded. Any bigeye tuna already on board an applicable longline fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. In the case of a vessel that has declared to NMFS pursuant to 50 CFR 665.23(a) [applicable to the Hawaii-based longline fishery] that the current trip type is shallow-setting, the 14-day limit would be waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the restrictions, as recorded by the NMFS observer on board the vessel. Starting on the announced date and extending through the last day of that calendar year, it would also be prohibited to transship bigeye tuna caught in the Convention Area by a longline vessel greater than 24 meters in length to any vessel other than a U.S. fishing vessel operating in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

These restrictions would not apply to bigeye tuna caught by longline vessels 24 meters in length or less, or to longline gear used outside of the Convention Area, such as in the western and central Pacific Ocean. However, to help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, there would be two additional, related, prohibitions that would be in effect starting on the announced date and extending through the last day of that calendar year. First, it would be prohibited to fish with a large-scale longline vessel both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel, unless on a declared shallow-setting trip, would still be required to land any bigeye tuna taken within the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a large-scale longline vessel is used to fish outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area.

Restrictions in the Purse Seine Fishery The proposed rule would prohibit fishing in the EPO by all U.S. purse seine vessels class sizes 4–6 for a period of 59 days in 2009, 62 days in 2010, and 73 days in 2011. Each CPC is required to choose one of two periods in each year to implement the closure for all of its purse seine vessels. For 2009, NMFS does not have the discretion to choose the earlier closure period which would have started on August 1, 2009, due to the timeframe associated with the rulemaking process in the United States. Thus, for 2009, the closure would be from November 21, 2009, to January 18, 2010. For 2010, the options are: i) July 29, 2010, to September 28, 2010, or ii) November 18, 2010, to January 18, 2011. For 2011, the options are: i) July 18, 2011, to September 28, 2011, or ii) November 7, 2011, to January 18, 2012. NMFS will select one of the two closure periods for 2010 and 2011 after consideration of public comments. Notwithstanding the general prohibition on fishing during the closure period, a class size 4 vessel would be allowed to make one single fishing trip of up to 30 days duration during the specified closure periods, provided that any such vessel carries an observer. In Resolution C–09–01, the IATTC has reserved the option of reversing its adoption of the closure at its regular annual meeting in June 2011. If such a decision occurs, NMFS would initiate rulemaking to implement the IATTC decision.

The proposed rule would also establish an additional area closed to fishing for skipjack, bigeye, and yellowfin tunas by U.S. purse seine vessels class sizes 4–6 from September 29 to October 29 in 2009, 2010, and 2011. The area is a rectangle to the west of the Galapagos Islands and was chosen due to the high levels of juvenile bigeye tuna catch by purse seiners in the area. The area is between 96 and 110 W. longitude and between 4 N. and 3 S. latitude in the Convention Area and is depicted in Figure 1. Purse seine vessels class size 4–6 may transit the closed areas with all fishing gear stowed in a manner so as not to be readily available for fishing.

Figure 1. Proposed closure area. The area that would be closed to purse seine fishing is the high seas area within the rectangle bounded by the bold black lines. This map displays indicative maritime boundaries only.



Proposed Closure Area

Purse seine vessels would also continue to be required to retain and land all skipjack, bigeye, and yellowfin tunas; however, there would be some minor changes to the existing regulations at 50 CFR 300.24(e) and 300.25(e)(1). The regulations would be amended to be consistent with IATTC Resolution C–09–01, so the catch retention measure would only be applicable to purse seine vessels class size 4–6, and the exception to the current tuna retention measure would be adjusted accordingly. Tuna would not need to be retained for fish considered unfit for human consumption for reasons other than size, and the single exemption of this would be the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set. Currently the regulatory language is slightly different than this but with similar intent, so the amendment would serve to make the regulatory language consistent with the resolution, but would most likely not result in any significant changes to the purse seine fishery. The catch retention requirement would then remain in effect through December 31, 2011. In Resolution C–09–01, the IATTC has reserved the option of reversing its adoption of the catch retention measure at its regular annual session in 2010. If such a decision occurs, NMFS will take appropriate action to rescind the tuna retention provision.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. The results of the analysis are stated below. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The purpose of this proposed rule is to implement IATTC Resolution C–09–01 which has the conservation objective of reducing the fishing mortality rate of bigeye tuna in the EPO. This action is necessary for the United States to satisfy its international obligations under the Convention, and reduce fishing pressure on bigeye tuna, a shared international resource which is currently subject to overfishing according to NMFS.

Longline Fishery

The proposed rule would apply to owners and operators of U.S. longline vessels over 24 meters length overall, and U.S. purse seine vessels class sizes 4–6 fishing for yellowfin, bigeye, and skipjack tunas in the Convention Area. The total number of affected longline vessels is approximated by the average number of U.S. large-scale longline vessels that have caught bigeye tuna in the EPO in 2005–2008. In each of the years 2005 through 2008, the number of large-scale longline vessels that caught bigeye in the EPO were 18, 8, 18, and 30, respectively. Thus approximately 19 longline vessels on average have the potential to be affected by this proposed rule, if adopted. The majority of the longline vessels that may be affected by this proposed rule are based out of Hawaii and American Samoa. There is also one longline vessel based out of California that would be affected by the proposed rule. These longline vessels target bigeye tuna using deep sets, and during certain parts of the year, portions of the Hawaii and American Samoa fleet target swordfish using shallow sets.

Most of the Hawaii and American Samoa fleets' fishing effort has traditionally been in the WCPO, but fishing has also taken place in the EPO. The proportion of the large-scale longline vessels annual bigeye tuna catches that were captured in the EPO from 2005 through 2008 ranged from 5 percent to 24 percent, and averaged 14 percent. By far most of the U.S. annual EPO bigeye tuna catch has typically been made in the second and third quarters of the year; in the period 2005–2008 the percentages caught in the first, second, third, and fourth quarters were 19, 25, 51, and 5 percent, respectively.

As an indication of the size of businesses in the fishery, average annual fleet-wide ex-vessel revenues during 2005–2007 were about $60 million. Given the number of vessels active during that period (127, on average), this indicates an average of about $500,000 in annual revenue per vessel, thus all of the businesses affected by the longline measures would be considered small business entities.

For the purpose of projecting baseline conditions for the longline fishery under no action, this analysis relies on fishery performance from 2005 through 2008, since prior to 2005 the longline fishery regulations underwent major changes (the swordfish-directed shallow-set longline fishery was closed in 2001 and reopened in 2004 with limits on fishing effort and turtle interactions). Bigeye tuna landings from 2005 through 2008 suggest that it is unlikely that the proposed limit would be reached in any of the years during which the limit would be in effect (2009, 2010, and 2011). The proposed limit, 500 mt, is less than the amount landed by large-scale longline vessels in 2005–2008. Large-scale longline vessels fishing in the EPO caught about 166 mt of bigeye tuna in 2005, 51 mt of bigeye tuna in 2006, 118 mt of bigeye tuna in 2007, and 325 mt of bigeye tuna in 2008. Thus, it is estimated that even with a large increase in the catch rates of bigeye tuna in the EPO the 500 mt catch limit would not be reached in any of the applicable years (2009–2011).

In summary, all entities affected by the bigeye quota in longline fisheries are believed to be small entities, so small entities would not be disproportionately affected relative to large entities. In addition, this part of the proposed rule is not likely to have a significant impact on a substantial number of small entities because it is unlikely that the bigeye landings limit that would be imposed on large-scale longline vessels would be reached in any given year.

Purse Seine Fishery

The total number of affected purse seine vessels is approximated by the current number of U.S. purse seine vessels class size 4–6 authorized to fish in the IATTC Convention Area. As of July 2009, there were five U.S. purse seine vessels listed on the IATTC Vessel Register; two are class size 5 (273 to 363 mt carrying capacity) and three are class size 6 (greater than 363 mt carrying capacity). Purse seine vessels class sizes 5 and 6 usually fish outside U.S. waters and deliver their catch to U.S. (e.g., American Samoa) or foreign (e.g., Ecuador, Mexico, Colombia, Costa Rica) ports. Skipjack and yellowfin tuna are the primary target species in the purse seine fishery, and bigeye tuna is incidentally targeted. Class size 6 vessels are required to have 100 percent observer coverage, while class size 5 vessels are not required to carry an observer. Purse seine vessels class size 5 would be considered small business entities (revenues equal to or less than $4 million per year). It is estimated that from 2004–2008, the majority, if not all, class size 5 U.S. purse seine vessels have had revenues of less than $0.5 million per year. Class size 6 vessels are categorized as large business entities (revenues in excess of $4 million per year). A large purse seine vessel typically generates about 4,000 to 5,000 mt of tuna valued at about $4 to $5 million per year.

It is estimated that purse seine sets would be prohibited for 16 percent of the year in 2009 (59 day closure/365 days), 17 percent of the year in 2010 (61 day closure/365 days), and 20 percent of the year in 2011 (73 day closure/365 days), thus catches would be expected to be affected accordingly unless effort was shifted to areas outside of the Convention Area during the closure period, or to different times of the year when there is no closure. The affected vessels are capable of fishing outside of the closure area (i.e., in the WCPO) during the closure period and/or for the remainder of the year, since the fishery continues year round, and vessels tend to use relatively short closures (such as these) for regular vessel maintenance. Fishing in the WCPO may produce additional costs to some of the affected vessels that are based out of the U.S. West Coast and primarily fish in the EPO due to the increase in costs associated with fishing further away from port. In addition, if a vessel has already undergone the necessary maintenance and repairs for 2009, the closure could result in economic costs to the vessel owner.

Other factors that have the potential to inhibit these vessels from fishing outside of the EPO include licensing availability and costs, and the recent implementation of effort limits for purse seine vessels fishing in the WCPO. It is assumed that fishing in the WCPO is the only practical geographic alternative for these vessels. Purse seine vessels fishing in the WCPO under the South Pacific Tuna Treaty (SPTT) are required to license their vessels; the maximum number of licensed vessels allowed in the U.S. purse seine fishery in the WCPO is 40 and currently there are 39 licensed vessels. The vessel registration fee is about $3,250 per vessel. The three class size 6 purse seine vessels that are authorized to fish in the Convention Area are already registered under the SPTT. It may not be economically viable for the class size 5 purse seine vessels to register under the SPTT and fish in the WCPO because of their smaller carrying capacity and the increased costs associated with fishing far from port. At least one of the class size 5 vessels would not be able to register to fish in the WCPO because only one license is available.

In addition, a Final Rule published in the **Federal Register** on August 4, 2009, prohibits purse seine sets around FADs, deploy FADs, or service FADs in the WCPO from July 1 to September 30 in 2010 and 2011, and fishing effort limits were established for 2009 through 2011 on the number of fishing days that may be spent by the U.S. purse seine fleet on the high seas in the WCPO and in areas under U.S. jurisdiction (i.e., the U.S. EEZ) (74 FR 38544, August 4, 2009). However, according to an analysis of the impacts of the effort limits on the purse seine fishery in the WCPO, prepared by NMFS for the Final EA, the effort limit may not represent real change from the status quo as the effort limit is set at approximately the level expected to be exerted by 40 vessels. In addition, during the FAD prohibition period, purse seine vessels would still be permitted to make purse seine sets on unassociated schools of tuna, which generally results in a different catch composition.

In summary, two small business entities, and three large business entities may be affected by the purse seine measures. Small entities would not be disproportionately affected relative to large entities because it is likely that these entities would be able to fish during the rest of the year when the fishery is not subject to a closure, and it may be possible for at least one of these vessels to obtain the necessary license to fish in the WCPO during the closure period. In addition, this part of the proposed rule is not likely to have a significant impact on a substantial number of small entities because only two vessels may be affected and it is estimated that their fishing effort will not change much from the status quo.

NMFS compared the effects of the proposed rule and various alternatives to the proposed rule on small business entities. For the longline fishery, there was a no-action alternative and two action alternatives. One of the action alternatives would prohibit all longline fishing in the Convention Area once the limit is reached, rather than just prohibiting the retention, transshipment, and landing of bigeye tuna caught in the Convention Area. The other action alternative would

prohibit deep-set longline fishing in the Convention Area once the limit is reached, allowing shallow-set longline fishing in the Convention Area to continue, provided that no bigeye tuna and no yellowfin tuna caught in the Convention Area are retained, transshipped, or landed. It is estimated that the bigeye quota would not be reached in any year based on a forecast conducted by the PIFSC, thus fishing effort would not be affected and the proposed action and the alternatives are not likely to have an economic impact on small business entities. However, in the unlikely event that the bigeye quota were reached, both of these alternatives would have greater economic impacts on small entities as they would place greater restrictions on the fishery compared to the proposed action.

For the EPO purse seine closure, the members of the IATTC are given the discretion to choose between two options for when to implement the closure period in each year. Thus, there is one action alternative and one no-action alternative for each applicable year which differs from the proposed action in terms of when the closure is implemented. However, based on catch data from 2004–2009, small entities have historically made more tuna landings in the EPO during the alternative's closure period (July through September) compared to the proposed closure period (November through January). Thus, this option would not minimize the economic impact on small entities and has the potential to increase it. There were no alternatives for the 30–day purse seine closure to the west of the Galapagos from 2009–2011 and for the tuna retention measure which would accomplish the stated objectives of Resolution C–09–01 and which would minimize any significant economic impact on the affected small entities.

There are no reporting, recordkeeping or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: October 13, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, the heading for subpart C and subpart C are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951–961 *et seq.*

2. In § 300.21, the definition of ''Fishing trip'' is revised and a definition of ''Longline gear'' is added, in alphabetical order, to read as follows:

§ 300.21 Definitions.

* * * * *

Fishing trip means a period of time during which a fishing vessel is used for fishing, beginning when the vessel leaves port and ending when the vessel lands fish.

* * * * *

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

* * * * *

3. In § 300.24, paragraph (e) is revised, and new paragraphs (k) through (n) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area, except fish considered unfit for human consumption due to reasons other than size, and except on the last set of the trip if there is insufficient well capacity to accommodate the entire catch.

* * * * *

(k) Use a fishing vessel over 24 meters in length to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.25(b)(4)(i) or (ii).

(l) Use a fishing vessel over 24 meters in length to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.25(b)(4)(iii).

(m) Fail to stow gear as required in § 300.25(b)(4)(iv) or (f)(3).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(f)(1) or (2).

4. In § 300.25, paragraphs (b) and (e)(1) are revised, and paragraph (f) is added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(b) *Tuna quotas in the longline fishery in the EPO.*

(1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) For each of the calendar years 2009, 2010, and 2011, there is a limit of 500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in length.

(3) NMFS will monitor bigeye tuna landings with respect to the limit established under paragraph (b)(2) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit in any year is expected to be reached by a specific future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice in the **Federal Register** announcing that the limit has been reached and that the restrictions described in paragraphs (b)(4) of this section will be in effect through the end of the calendar year.

(4) Once an announcement is made pursuant to paragraph (b)(3) of this section, the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(ii) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. In the case of a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(iii) Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in length in the

Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(iv) A fishing vessel of the United States over 24 meters in length may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (b)(3) of this section, in which case the provisions of paragraphs (b)(4)(ii) and (b)(4)(iii) of this section still apply.

(v) If a fishing vessel of the United States over 24 meters in length is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

* * * * *

(e) *Bycatch reduction measures.*

(1) Bigeye, skipjack, and yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except fish deemed unfit for human consumption for reasons other than size from 0000 hours on January 1, 2010 to 2400 hours on December 31, 2011. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

* * * * *

(f) *Purse seine closures in the EPO.*

(1) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area from 0000 hours on November 21, 2009, to 2400 hours on January 18, 2010; from 0000 hours on November 18, 2010, to 2400 hours on January 18, 2011; and from 0000 hours on November 7, 2011, to 2400 hours on January 18, 2012, except that a vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing trip of up to 30 days duration during the specified closure period, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(2) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2009, 2010, or 2011 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

(3) At all times while a vessel is in a Closed Area established under paragraphs (f)(1) or (f)(2) of this section, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

[FR Doc. E9–25064 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 200

Monday, October 19, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 3575, subpart A, ''Community Programs Guaranteed Loans.''

DATES: Comments on this notice must be received by December 18, 2009 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Kendra Doedderlein, Senior Loan Specialist, RHS, STOP 0787, 1400 Independence Avenue, SW., Washington, DC 20250–0788, telephone (202) 720–1503, or by e-mail at *kendra.doedderlein@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 3575, subpart A, ''Community Programs Guaranteed Loans.''

OMB Number: 0575–0137.

Expiration Date of Approval: February 28, 2010.

Type of Request: Extension of a currently approved information collection and recordkeeping requirements.

Abstract: Private lenders make the loans to public bodies and nonprofit corporations for the purposes of improving rural living standards and for other purposes that create employment opportunities in rural areas. Eligibility for this program includes community facilities located in cities, towns, or unincorporated areas with a population of up to 20,000 inhabitants.

The information collected is used by the agency to manage, plan, evaluate, an account for government resources. The reports are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Nonprofit corporations and public bodies.

Estimated Number of Respondents: 37,965.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 39,796.

Estimated Total Annual Burden on Respondents: 48,873 hours.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0226.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 14, 2009.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. E9–25103 Filed 10–16–09; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt-Toiyabe National Forest; Nevada; Mountain City, Ruby Mountains, and Jarbidge Ranger Districts Combined Travel Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Based on the content of comments received during scoping the Humboldt-Toiyabe National Forest will prepare an environmental impact statement (EIS) to disclose the impacts associated with the following proposed actions:

- Changes to the forest transportation system, including designation of certain unauthorized routes by motor vehicle use, changing designation of National Forest System (NFS) roads to NFS trails open for motor vehicle use, and closing some NFS roads for access or environmental reasons.
- Prohibiting motor vehicle use off designated roads and trails consistent with the national travel management rule.
- The three ranger districts currently manage approximately 1,100 miles of motor vehicle routes for public use. The proposed action could designate as many as 1,300 miles of unauthorized routes to meet administrative and utilization needs across the three districts. Many of the unauthorized routes considered for designation have been in existence for many years but have not been recognized as a part of the forest transportation system.

DATES: The districts began the travel management process in 2005 and held an initial set of open houses in late 2005 and early 2006. Between 2006 and 2009, the district rangers met informally with county and tribal officials as well as user groups. The districts have accepted comments on this project since January 12, 2009 and will continue to do so until the publication of a draft EIS during the second quarter of 2010.

ADDRESSES: Written comments should he sent to: Travel Management Team, Mountain City Ranger District, 2035 Last Chance Road, Elko, NV 89801. E-mail comments may be submitted to *comments-intermtn-humboldt-toiyabe-rubymtns-jarbidgea@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: James Winfrey, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431. *Phone:* 775–355–5308.

SUPPLEMENTARY INFORMATION:

Background

Over the past few decades, the availability and capability of motorized vehicles, particularly off-highway vehicles (OHVs) and sport utility vehicles (SUVs) has increased. Nationally, the number of OHV users has climbed sevenfold in the past 30 years, from approximately 5 million in 1972 to 36 million in 2000.

Unmanaged recreation, including impacts from OHVs, is one of the ''Four Key Threats Facing the Nation's Forests and Grasslands'' (USDA Forest Service June 2004). Unmanaged OHV use has resulted in unplanned roads and trails, erosion, watershed and habitat degradation, and impacts to cultural resource sites.

On November 9, 2005, the Forest Service published its final travel management regulations in the **Federal Register** (FR Vol. 70, No. 216, Nov. 9, 2005, pp. 68264–68291). This Travel Management Rule requires designation of those roads, trails, and areas that are open to motor vehicle use in national forests. Designations will be made by class of vehicle and, if appropriate, by time of year. The final rule prohibits the use of motor vehicles on the designated system. Only NFS roads and trails are designated for motorized vehicle use. For an unauthorized route to be designated, it must first be added to the forest transportation system.

On some NFS lands long managed as open to cross-country motor vehicle travel has resulted in unplanned, unauthorized roads and trails. These routes were generally developed without environmental analysis or public involvement, and are not designated as NFS roads and trails included in the forest transportation system. Nevertheless, some unauthorized routes are well-sited, provide excellent opportunities for outdoor recreation by motorized and non motorized users, and would enhance the NFS of designated roads, trails, and areas. Other unauthorized routes are poorly located and cause unacceptable impacts to Forest resources. The Mountain City, Ruby Mountains, and Jarbidge Ranger Districts recently completed an inventory of unauthorized routes and have identified approximately 1,300 miles of unauthorized routes within the boundaries of the districts.

Purpose and Need for Action

On November 9, 2005, the Secretary of Agriculture adopted rules which provided for a fundamental change in the management of motor vehicle use on the national forests (70 FR 68288). Until that time, there was a presumption that all roads, trails, and areas were open to use by motor vehicles. If use by motor vehicles was not appropriate for any reason, the Forest Service had to take action to close specific roads, trails, or areas and prohibit motorized use. This resulted in a largely unplanned transportation system, with many routes established by repeated use, and damage to resources occurring from uncontrolled cross country travel.

The 2005 rule provided a mechanism for transition to a new system for managing motor vehicle use. Following appropriate environmental analysis and public involvement, those roads, trails, and areas designated for motorized use will be identified on a motor vehicle use map, and any motor vehicle use not consistent with those designations will be prohibited by the rule (36 CFR 261.13). In this way, the national forests will provide sustainable transportation systems for travel and recreation and for management and protection of resources prone to damage from unmanaged use.

The rule also provides that the management of motor vehicle use is to be an ongoing process, with continuing evaluation of the designations and revision as needed (36 CFR 212.54). It is expected that many changes to the designated system will be made over time to meet recreation and transportation needs and protect national forest resources.

The number of unauthorized routes across the Mountain City. Ruby Mountains, and Jarbidge Ranger Districts has increased over many years. Some of these routes were established in areas where there is the potential for resource damage. Prohibiting motor vehicles from traveling off designated roads and trails would reduce the effects to natural resources caused by cross-country travel. This action responds to the goals and objectives outlined in the Humboldt National Forest Land and Resource Management Plan (Forest Plan) (USDA Forest Service 1986). It helps move the project area towards the desired conditions described in the Forest Plan by allowing motor vehicle use where it will not unacceptably impact forest resources or unnecessarily impact other forest users.

The purpose of the proposed action is to designate roads, trails, and areas for motor vehicle use to meet recreation, access, and management objectives while limiting environmental impacts and moving towards a sustainable transportation system across the three districts.

Proposed Action

In general, the routes proposed for addition to the forest transportation system are rough, unmaintained, and unsuitable for two-wheel drive low-clearance vehicles. They may be used by Forest Service personnel in the administration of their duties, ranchers accessing portions of their allotments, geologists searching for minerals, hunters and hikers gaining access to remote areas, and others driving for pleasure on NFS lands.

Following issuance of the decision, all roads and trails designated for motor vehicle use would be identified on a motor vehicle use map. Motor vehicle use that is not consistent with the designations will be prohibited under the terms of 36 CFR 261.13. However, the prohibitions on motor vehicle use will not apply to the following activities, as detailed in 36 CFR 261.13:

- Aircraft.
- Watercraft.
- Over-snow vehicles.
- Limited administrative use by the Forest Service.
- Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes.
- Authorized use of any combat or combat-support vehicle for national defense purposes.
- Law enforcement response to violations of law, including pursuit.
- Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulation (e.g., woodcutting permits, term grazing permits, approved plans of operations) (36 CFR 212.51a).
- Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other public road authority.

Responsible Officials

Tom Montoya, District Ranger, Mountain City Ranger District, 2035 Last Chance Road, Elko, NV 89801; and Car Abbas, District Ranger, Ruby Mountains and Jarbidge Ranger District, 140 Pacific Ave., P.O. Box 246, Wells, NV 89835.

Nature of Decision To Be Made

Based on this environmental analysis, the district rangers will decide:

- Which routes motorized traffic would he restricted to, and what areas, if any, would he open to cross-country motorized travel.
- Which alternative best represents the minimum road system needed for

safe and efficient travel and for administration, utilization, and protection of NFS lands.

Scoping Process

The districts have accepted comments on this project since January 12, 2009, and will continue to do so until the publication of a draft EIS during the second quarter of 2010. A copy of the Travel Analysis Process (TAP) is available on the Internet at *http://www.fs.fed.us/r4/htnf/* and at the district offices in Elko and Wells, Nevada. Copies of project maps can also he viewed on the Internet, or a copy of the maps on DVD can be requested by contacting the district rangers at the above addresses. Hard copies of the maps are also available for viewing at the district offices and public libraries in Elko and Wells, Nevada. Copies of these maps have also been provided to Elko County and local tribal offices.

Comment Requested

Comments received before the draft EIS is published will he given consideration.

Dated: October 5, 2009.

Torn Montoya,

Mountain City District Ranger.

Dated: October 5, 2009.

Nancy Taylor,

Acting for Gar Abbas, Ruby Mountains and Jarbidge District Ranger.

[FR Doc. E9–24900 Filed 10–16–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Flathead Resource Advisory Committee will meet in Kalispell, Montana. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to hear project proposal presentations for 2009.

DATES: The meetings will be held November 3, 10 and 17, and December 1 and 8, 2009. Each meeting will be held 4–6 p.m.

ADDRESSES: The meeting will be held at 650 Wolfpack Way, Flathead National Forest Office, Kalispell, MT. Written comments should be sent to Flathead National Forest, *Attn:* RAC, 650 Wolfpack Way, Kalispell, MT 59901. Comments may also be sent via e-mail to *dgermann@fs.fed.us* or via facsimile to 406.758.5351.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 650 Wolfpack Way, Kalispell, MT. Visitors are encouraged to call ahead to 406.758.5252 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Denise Germann, Flathead National Forest, 406.758.5252.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: presentation of 2009 project proposals and approval of projects. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by three calendar days prior to the meeting will have the opportunity to address the Committee at those sessions.

Dated: October 9, 2009.

Denise Germann,

Designated Federal Officer, Flathead Resource Advisory Committee.

[FR Doc. E9–24902 Filed 10–16–09; 8:45 am]

BILLING CODE M

BROADCASTING BOARD OF GOVERNORS

Proposed Collection Reinstatement with Change; Comment Request

AGENCY: The Broadcasting Board of Governors.

ACTION: Proposed Collection Reinstatement With Change; Comment Request.

SUMMARY: The Broadcasting Board of Governors (BBG), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection titled, ''Surveys and Other Audience Research for Radio and TV Marti.'' This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with this program is conducted pursuant to the mandate given to the BBG (formerly the United States Information Agency) in accordance with Public Law 98–111, the Radio Broadcasting to Cuba Act, dated, October 4, 1983, to provide for the broadcasting of accurate information to the people of Cuba and other purposes. This act was amended by Public Law 101–246, dated, February 16, 1990, which established the authority for TV Marti.

DATES: Comments must be submitted on or before December 18, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Brown, the BBG Clearance Officer, BBG, IBB/A, Room 1274, 330 Independence Avenue, SW., Washington, DC 20237, telephone (202) 203–4664, e-mail address *cabrown@bbg.gov*.

Copies: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the BBG Clearance Officer.

SUPPLEMENTARY INFORMATION: Public reporting burden for this proposed collection of information is estimated to total 772 hours based on an average of the following: 30 minutes (.50 of an hour) per response for 600 Field Survey respondents conducted 1 time per year; 240 minutes (4 hours) for 48 Focus Group Study respondents conducted 2 times per year; and 153 minutes (2.33 hours) for 120 Panel Group Study respondents based on one panel study, 10 respondents per month for 12 months. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses are voluntary and respondents will be asked to respond only one time. Comments are requested on the proposed information collection concerning:

(a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility;

(b) the accuracy of the Agency's burden estimates;

(c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information to Ms. Cathy Brown, the BBG Clearance Officer, BBG, IBB/A, Room 1274, 330 Independence Avenue, SW., Washington, DC 20237, telephone (202) 203–4664, *e-mail address: cabrown@bbg.gov*.

Current Actions: BBG is requesting reinstatement of this collection for a three-year period and approval for a revision to the burden hours.

Title: Surveys and Other Audience Research for Radio and TV Marti

Abstract: Data from this information collection are used by BBG's Office of Cuba Broadcasting (OCB) in fulfillment of its mandate to evaluate effectiveness of Radio and TV Marti operations by estimating the audience size and composition for broadcasts; and assess signal reception, credibility and relevance of programming through this research.

Proposed Frequency of Responses:

No. of Respondents—600 Field Study + 48 Group Study + 120 Panel Study = 768.

Recordkeeping Hours—.50 Field Study + 4 Group Study + 2.38 Panel Study Group = (300) + (192) + (280) = 772.

Total Annual Burden—

Dated: September 30, 2009.

Marie Lennon,

Chief of Staff for IBB.

[FR Doc. E9–25046 Filed 10–16–09; 8:45 am]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Antarctic Marine Living Resources Conservation and Management Measures.

OMB Control Number: 0648–0194.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 86.

Average Hours per Response: Five-year permit applications, 1 hour; applications for new or exploratory fisheries, 28 hours; harvest and/or transshipment applications, 2 hours; radio transmissions, 12 minutes per vessel; vessel monitoring system: installation (annualized over 5 years), annual maintenance and initial activation certification (annualized over 5 years, 2 hours, 48 minutes; vessel and gear marking, 15 minutes per marking; observer requests, 5 minutes; catch data submission, 30 minutes; dealer import and/or re-export permit applications, dealer pre-approval of toothfish catch documents, dealer re-export catch documents and dealer import tickets, 15 minutes.

Burden Hours: 294.

Needs and Uses: The 1982 Convention on the Conservation of Antarctic Marine Living Resources (Convention) established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The United States (U.S.) is a Contracting Party to the Convention. The Antarctic Marine Living Resources Convention Act (AMLRCA) directs and authorizes the U.S. to take actions necessary to meet its treaty obligations as a Contracting Party to the Convention. The regulations implementing AMLRCA are at 50 CFR part 300, subpart G. The recordkeeping and reporting requirements at 50 CFR part 300 form the basis for this collection of information. This collection of information concerns research in, and the harvesting and importation of, marine living resources from waters regulated by CCAMLR related to ecosystem research, U.S. harvesting permit application and/or harvesting vessel operators and to importers and re-exporters of Antarctic marine living resources. The collection is necessary in order for the United States to meet its treaty obligations as a contracting party to the Convention.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: October 14, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–25105 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–802]

Certain Frozen Warmwater Shrimp From Ecuador: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 15, 2009, the Department of Commerce (Department) published in the **Federal Register** the final results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Ecuador for the period of review (POR) of February 1, 2007, through August 14, 2007. *See Certain Frozen Warmwater Shrimp From Ecuador: Final Results of Antidumping Duty Administrative Review*, 74 FR 47201 September 15, 2009) (*Final Results*), and accompanying Issues and Decision Memorandum. Based on the correction of a ministerial error with respect to the calculation of the indirect selling expense ratio for the respondent Sociedad Nacional de Galapagos, S.A. (Songa), we have changed the final results margin for Songa and, as a result, the final results margins for the respondents not selected for individual examination in this administrative review.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Gemal Brangman, 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) 482–4136 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION: Following the publication of the *Final Results,* we received timely allegations of ministerial errors pursuant to 19 CFR 351.224(c) from Promarisco, S.A. (Promarisco) and Songa, the respondents selected for individual examination in this administrative review. Specifically, Promarisco claimed that the Department made two ministerial errors: (a) Double-counting costs associated with two unpaid U.S. sales; and (b) incorrectly calculating the

average of the payment date discrepancies observed at verification with respect to Promarisco's Spanish sales in the recalculation of third-country imputed credit expenses. *See* letter from Promarisco dated September 16, 2009. Songa claimed that the Department erred by adding certain general and administrative (G&A) expenses in the recalculation of Songa's indirect selling expense ratio, and including in those expenses antidumping-related expenses that should have been excluded. *See* letter from Songa dated September 16, 2009. No other party commented on these allegations.

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), ''includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.'' *See* also 19 CFR 351.224(f).

After analyzing the respondents' allegations, we have determined, in accordance with 19 CFR 351.224(e), that we made a ministerial error with respect to the inclusion of antidumping-related expenses in the recalculation of Songa's indirect selling expenses. With respect to Promarisco's allegations that the Department erred by double-counting costs associated with two unpaid U.S. sales, and by incorrectly calculating the average of the payment date discrepancies observed at verification with respect to Promarisco's Spanish sales, we find that neither allegation constituted a ministerial error pursuant to 19 CFR 351.224(f) because the Department's calculations accurately reflected the Department's intent as stated in the *Final Results*. With respect to Songa's allegation that the Department improperly classified certain G&A expenses, other than the antidumping-related expenses discussed above, as indirect selling expenses in its recalculation of Songa's indirect selling expense ratio, we also conclude that no ministerial error was committed under 19 CFR 351.224(f) because the Department's action was properly based on information on the record. For a detailed discussion of these ministerial error allegations, as well as the Department's analysis, see the memorandum entitled ''Allegations of Ministerial Errors in the Final Results,'' dated October 8, 2009.

Therefore, we are hereby amending the *Final Results* with respect to Songa to correct the ministerial error described above in our calculation of the indirect selling expense ratio, in accordance with 19 CFR 351.224(e). In addition, because the margin we calculated for the respondents not selected for individual examination was based on a simple average of the rates of the two respondents selected for individual examination in this review, Promarisco and Songa, we have recalculated the margin for the non-selected respondents to reflect the change in Songa's margin.

Amended Final Results of Review

As a result of the correction of the ministerial error with respect to Songa, we determine that weighted-average dumping margins exist for the respondents for the period February 1, 2007, through August 14, 2007, as follows:

Manufacturer/exporter	Percent margin
Promarisco, SA	0.85
Sociedad Nacional de Galapagos C.A. (Songa)	0.64
Review-Specific Average Rate Applicable to the Following Companies: [1]	
Agricola e Industrial Ecuaplantation SA	0.75
Agrol SA	0.75
Alberto Xavier Mosquera Rosado	0.75
Alquimia Marina SA	0.75
Babychic SA	0.75
Biolife SA	0.75
Braistar	0.75
Camaronera Jenn Briann	0.75
Camarones	0.75
Comar Cia Ltda	0.75
Doblertel SA	0.75
Dumary SA	0.75
Dunci SA	0.75
El Rosario Ersa SA	0.75
Empacadora Bilbo SA (Bilbosa)	0.75
Empacadora del Pacifico SA (EDPACIF SA)	0.75
Empacadora Dufer Cia. Ltda. (DUFER)	0.75
Empacadora Grupo Gran Mar (Empagran) SA	0.75
Empacadora Nacional CA	0.75
Empacadora y Exportadora Calvi Cia. Ltda	0.75
Emprede SA	0.75
Estar CA	0.75
Exporclam SA	0.75
Exporklore SA	0.75
Exportadora Bananera Noboa	0.75
Exportadora de Productos de Mar (Produmar)	0.75
Exportadora del Oceano (Oceanexa) CA	0.75
Exportadora Langosmar SA	0.75
Exportadora del Oceano Pacifico SA (OCEANPAC)	0.75
Exports Langosmar SA	0.75
Fortumar Ecuador SA	0.75
Gambas del Pacifico SA	0.75
Gondi SA	0.75
Hector Canino Marty	0.75
Hectorosa SA	0.75
Industrial Pesquera Santa Priscila SA (Santa Priscila)	0.75
Inepexa SA	0.75

Manufacturer/exporter	Percent margin
Jorge Luis Benitez Lopez	0.75
Karpicorp SA	0.75
Luis Loaiza Alvarez	0.75
Mardex Cia. Ltda	0.75
Marine	0.75
Marines CA	0.75
Mariscos de Chupadores Chupamar	0.75
Mariscos del Ecuador C. Ltda. (Marecuador)	0.75
Natural Select SA	0.75
Negocios Industriales Real Nirsa SA (NIRSA)	0.75
Novapesca SA	0.75
Ocean Fish	0.75
Oceaninvest SA	0.75
Oceanmundo SA	0.75
Oceanpro SA	0.75
Operadora y Procesadora de Productos Marinos SA (Omarsa)	0.75
Oyerly SA	0.75
P.C. Seafood SA	0.75
Pacfish SA	0.75
PCC Congelados & Frescos SA	0.75
Pescazul SA	0.75
Peslasa SA	0.75
Phillips Seafoods of Ecuador CA (Phillips)	0.75
Pisacua SA	0.75
Procesadora del Rio SA (Proriosa)	0.75
Productos Cultivados del Mar Proc	0.75
Productos Cultivados del Mar Proculmar Cia. Ltda	0.75
Productos del Mar Santa Rosa Cia. Ltda (Promarosa)	0.75
Propemar SA	0.75
Provefrut	0.75
Rommy Roxana Alvarez Anchundia	0.75
Sea Pronto Hector Marty Canino (Sea Pronto)	0.75
Sociedad Atlantico Pacifico SA	0.75
Soitgar SA	0.75
Studmark SA	0.75
Tecnica y Comercio de la Pesca CA (TECOPESCA)	0.75
Tolyp SA	0.75
Trans Ocean	0.75
Transcity SA	0.75
Transmarina CA	0.75
Transocean Ecuador SA	0.75
Uniline Transport System	0.75

[1] This rate is based on the simple average of the margins calculated for those companies selected for individual examination, excluding *de minimis* margins or margins based entirely on facts available, as discussed in the *Final Results.*

The Department will determine and the U.S. Bureau of Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of these amended final results of review. For a general discussion of the application of assessment rates, *see Final Results* at 47203.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.224(e).

Dated: October 13, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–25092 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS35

Marine Mammals; File No. 14450

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service's Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, FL 33149 [Principal Investigator: Dr. Keith Mullin], has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or e-mail comments must be received on or before November 18, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14450 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9300; fax (978) 281–9333; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL

33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 14450.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The SEFSC is requesting a five-year permit to conduct cetacean research in U.S. and international waters of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea. The research is designed to meet the SEFSC's mandates under the MMPA and ESA and primarily focuses on stock assessment. Specific objectives include: (1) define stock structure for each species; (2) provide estimates of each stock's abundance and distribution; (3) describe the habitat of each stock in terms of biological and oceanographic parameters; (4) study association, movement, and ranging patterns of individual animals using photo-identification; and (5) assess the level of anthropogenic chemical contaminants in selected species. Proposed activities include aerial and vessel-based line-transect sampling, acoustic sampling, behavioral observations, and vessel-based photo-identification and biopsy sampling. Tissue samples collected in other countries would be imported into the U.S. Research platforms would include large ships, small vessels, and a variety of aircraft. The SEFSC is requesting takes of all cetacean species that may occur in the study area, including the following species listed as endangered (maximum number of animals that would be taken per year by Level B harassment / maximum number of animals that would be biopsy sampled per year: blue whales (*Balaenoptera musculus*) (20/10), fin whales (*B. physalus*) (500/15), sei whales (*B. borealis*) (10/15), humpback whales (*Megaptera novaeangliae*) (1000/300), sperm whales (*Physeter macrocephalus*) (4000/300), and North Atlantic right whales (*Eubalaena glacialis*) (50/0). See table in application for numbers of takes requested for other species.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 9, 2009.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–25062 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On June 8, 2009, the Department of Commerce (the Department) published the preliminary results of the antidumping duty order on stainless steel plate in coils (SSPC) from Belgium. See Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 27097 (June 8, 2009) (Preliminary Results). This review covers one manufacturer/exporter of the subject merchandise: ArcelorMittal Stainless Belgium N.V. (AMS Belgium). The period of review (POR) is May 1, 2007, through April 30, 2008.

Based on our analysis of the comments received, we have made changes to the Preliminary Results. For the final dumping margins see the ''Final Results of Review'' section below.

DATES: *Effective Date:* October 19, 2009.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon at (202) 482–1168 or (202) 482–1167, respectively; Office of AD/CVD Operations 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2009, the Department published in the **Federal Register** the preliminary results of the seventh administrative review of the antidumping duty order on SSPC from Belgium. See Preliminary Results. Since the Preliminary Results, a case brief was timely filed by AMS Belgium on July 8, 2009 (AMS case brief). The petitioners [1] did not submit a case brief or rebuttal brief.

The issues raised in the case brief by AMS Belgium are addressed in the memorandum titled, ''Issues and Decision Memorandum for the Final Results of the Seventh Administrative Review of the Antidumping Duty Order on Stainless Steel Plate in Coils from Belgium (2007–2008)'', from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration (October 6, 2009) (Decision Memorandum), which is hereby adopted by this notice. A list of the issues addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is on file in the Central Records Unit (CRU), room 1117 of the Department of Commerce main building and can be accessed directly at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of the Antidumping Duty Order

The product covered by this order is certain stainless steel plate 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 plate products are

[1] The petitioners in this case include: Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, and the United Steelworkers of America, AFL–CIO/CLC (collectively, the petitioners).

flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils; (2) Plate that is not annealed or otherwise heat treated and pickled or otherwise descaled; (3) Sheet and strip; and (4) Flat bars.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00,71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 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, 7220.90.00.10, 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 written description of the merchandise subject to these orders is dispositive.

Period of Review

The period of review is May 1, 2007, through April 30, 2008.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made changes in the calculations for the final dumping margin. The changes made since the Preliminary Results are listed under the ''List of Issues,'' which is appended to this notice. The changes are discussed in detail in the memorandum to the File Through James Terpstra from Joy Zhang and titled, ''Analysis Memorandum for ArcelorMittal Stainless Belgium N.V. for the Final Results of the Seventh Administrative Review of Stainless Steel Plate in Coils (SSPC) from Belgium,'' dated October 6, 2009 (Final Sales Analysis Memorandum).

Facts Available

As discussed in the Preliminary Results, we found that it was appropriate to resort to facts otherwise available with an adverse inference to account for a certain selling expense [2] and U.S. other transportation expenses. The respondent, AMS Belgium, raised several issues in its case brief regarding the Department's application of facts otherwise available with an adverse inference with respect to the certain selling expense and the U.S. other transportation expenses. See the Decision Memorandum for a discussion of these issues.

We have considered the issues raised by AMS Belgium. With respect to the certain selling expense, the Department maintains its decision from the Preliminary Results that facts otherwise available with an adverse inference are warranted for these final results. Id. With respect to the U.S. other transportation expenses (data field name: USOTHR1U) reported by AMS Belgium, we have reconsidered the information provided and have changed our position, as outlined in the Preliminary Results, in which we applied facts otherwise available with an adverse inference for this expense. Specifically, during the sales verification, the company officials presented the Department with a calculation for this expense that was incorrect due to the weight basis applied therein. After reviewing AMS Belgium's case brief and our sales verification report and exhibits with respect to the calculation of USOTHR1U, we agree with AMS Belgium that we made a ministerial error in our two sample calculations of the per-unit USOTHR1U referenced in the Preliminary Results. Final Sales Analysis Memorandum. We find that AMS Belgium's recalculated USOTHR1U values provided at the constructed export price (CEP) verification for these two sample sales are correct. Accordingly, for the final results, we will use the actual USOTHR1U value that we collected at the CEP verification. See Sales Verification Exhibit 19; see also AMS case brief at Appendix 1.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period May 1, 2007, through April 30, 2008:

Manufacturer/exporter	Margin (percent)
ArcelorMittal Stainless Belgium N.V.	6.57

[2] Due to the proprietary nature of this particular expense, see the Department's discussion of this expense in the proprietary version of the Department's Final Sales Analysis Memorandum, dated October 6, 2009.

Duty Assessment

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above 4. minimis (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were minimis, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to that importer or customer and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific ad valorem rate is greater than de minimis, and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)-specific ad valorem rate is greater than minimis and we do not have reliable entered values, we calculate a per-unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see Antidumping and Countervailing Duty Proceeding Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

We have been enjoined from liquidating entries of the subject merchandise produced and exported by

Ugine & ALZ Belgium N.V. (U&A Belgium). Therefore, we do not intend to issue liquidation instructions to U.S. Customs and Border Protection (CBP) for entries made during the period May 1, 2007, through April 30, 2008, until such time the preliminary injunction issued on January 16, 2009, is lifted.

Cash Deposit Requirements

The following antidumping duty deposit rates will be effective upon publication of the final results of this administrative review for all shipments of SSPC from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) For AMS Belgium, the cash deposit rate will be the rate established in the final results of this review; (2) if the exporter is not a finn covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate will be 9.86 percent ad valorem, the ''all-others'' rate established in the LTFV investigation. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium, 64 FR 15476 (March 31, 1999). These deposit rates, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(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 doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(5). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix

List of Issues

Comment 1: Whether the Department Incorrectly Converted Inventory Carrying Costs (DINVCARU).

Comment 2: Whether to Exclude Certain Sales Transactions from the U.S. Sales Listing.

Comment 3: Whether to Use Facts Otherwise Available for U.S. Other Transportation Costs (USOTHR1U).

Comment 4: Whether to Use Facts Otherwise Available for Failing to Report a Certain Selling Expense.

Comment 5: Whether to Use AMS Belgium's Reported U.S. Warranty Expense.

Comment 6: Whether to Offset Negative Margins.

[FR Doc. E9–24699 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886, A–557–813, A–549–821]

Polyethylene Retail Carrier Bags From the People's Republic of China, Thailand, and Malaysia: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2009, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC), Thailand, and Malaysia pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-year (''Sunset'') Review, 74 FR 31412 (July 1, 2009). The Department has conducted expedited (120-day) sunset reviews for these orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping as indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* October 19, 2009.

FOR FURTHER INFORMATION CONTACT: Dustin Ross or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0747 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2009, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders [1] on PRCBs from the PRC, Malaysia, and Thailand pursuant to section 751(c) of the Act. *See* Initiation of Five-year (''Sunset'') Reviews, 74 FR 31412 (July 1, 2009) (Notice of Initiation).

The Department received notices of intent to participate in these sunset reviews from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, Superbag Corporation, Unistar Plastics LLC, Command Packaging, Roplast Industries Inc., and Genpack LLC (collectively, the Committee) within the 15-day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested-party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.

The Department received complete substantive responses to the Notice of Initiation from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive responses from any respondent interested parties. On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and no responses filed on behalf of respondent interested parties and in accordance with 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the

[1] On August 9, 2004, the Department published the following antidumping duty orders: Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 48201 (August 9, 2004); Antidumping Duty Order: Polyethylene Retail Carrier Bags From Malaysia, 69 FR 48203 (August 9, 2004); Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand, 69 FR 48204 (August 9, 2004).

antidumping duty orders on PRCBs from the PRC, Malaysia, and Thailand.

Scope of the Orders

The product covered in the sunset reviews of the antidumping duty orders on PRCBs from the PRC, Malaysia, and Thailand is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, e.g., grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scopes of the orders exclude (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, e.g., garbage bags, lawn bags, trash-can liners.

As a result of changes to the Harmonized Tariff Schedule of the United States (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written descriptions of the scopes of the orders are dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Polyethylene Retail Carrier Bags from the People's Republic of China, Malaysia, and Thailand'' from Acting Deputy Assistant Secretary John M. Andersen to Acting Assistant Secretary Ronald K. Lorentzen dated concurrently with this notice (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room 1117 of the main Department of Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

The Department determines that revocation of the antidumping duty orders on PRCBs from the PRC, Malaysia, and Thailand would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Country	Company	Weighted-average margin (percent)
PRC	Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (formerly Dongguan Huang Jiang United Wah Plastic Bag Factory).	23.22
	Rally Plastics Company, Ltd	23.85
	Shanghai Glopack Packing Company, Ltd., and Sea Lake Polyethylene Enterprise, Ltd.	19.79
	Xiamen Ming Pak Plastics Company, Ltd	35.58
	Zhongshan Dongfeng Hung Wai Plastic Bag Manufactory	41.28
	Beijing Lianbin Plastics and Printing Company, Ltd	25.69
	Dongguan Maruman Plastic Packaging Co., Ltd. (formerly Dongguan Zhongqiao Combine Plastic Bag Factory).	25.69
	Good-in Holdings, Ltd	25.69
	Guangdong Esquel Packaging Co., Ltd	25.69
	Nan Sing Plastics, Ltd	25.69
	Ningbo Fanrong Plastics Products Co., Ltd	25.69
	Ningbo Huansen Plasthetics Co., Ltd	25.69
	Rain Continent Shanghai Company, Ltd	25.69
	Shanghai Dazhi Enterprise Development Company, Ltd	25.69
	Shanghai Fangsheng Coloured Packaging Company, Ltd	25.69
	Shanghai Jingtai Packaging Material Company, Ltd	25.69
	Shanghai Light Industrial Products Import and Export Corporation	25.69
	Shanghai Minmetals Development, Ltd	25.69
	Shanghai New Ai Lian Import and Export Company, Ltd	25.69
	Shanghai Overseas International Trading Company, Ltd	25.69
	Shanghai Yafu Plastics Industries Company, Ltd	25.69
	Weihai Weiquan Plastic and Rubber Products Company, Ltd	25.69
	Xiamen Xingyatai Industry Company, Ltd	25.69
	Xinhui Henglong	25.69
	PRC-wide Rate	77.57
Malaysia	Teong Chuan Plastic and Timber Sdn. Bhd	101.74
	Brandpak Industries Sdn. Bhd	101.74
	Gants Pac Industries	101.74
	Sido Bangun Sdn. Bhd	101.74
	Zhin HinlChin un Plastic Manufacturer Sdn. Bhd	101.74
	All Others	84.94
Thailand	Thai Plastic Bags Industries Co., Ltd	2.26

Country	Company	Weighted-average margin (percent)
	Universal Polybags Co. Ltd./Advance Polybags Inc./Alpine Plastics Inc./API Enterprises Inc.	5.35
	TRC Polypack	122.88
	Champion Paper Polybags Ltd	122.88
	Zip-Pac Co., Ltd./King Pac Industrial Co., Ltd./King Pak/Zippac/Dpac Industrial/Kingbag/KP.	122.88
	All Others	2.80

Notification Regarding APO

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: October 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–24540 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS39

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Texas Habitat Protection Advisory Panel (AP).

DATES: The meeting will convene at 9 a.m. on Tuesday, November 10, 2009 and conclude no later than 4 p.m.

ADDRESSES: This meeting will be held at the Hampton Inn & Suites Houston-Clear Lake-NASA, 506 West Bay Area Blvd., Webster, TX 77598.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Habitat Support Specialist, Gulf States Marine Fisheries Commission; telephone: (228) 875–5912.

SUPPLEMENTARY INFORMATION: At this meeting, the AP will discuss a proposed seawall, ''The Ike Dike'', to protect Galveston Bay from hurricane storm surge, an update on oyster restoration in Galveston Bay, the Texas Clipper artificial reef project, status of the Flower Garden Banks National Marine Sanctuary Management Plan Review, the South Padre Island Second Access Project, and juvenile red snapper habitat use in the Gulf of Mexico.

The Texas group is part of a three unit Habitat Protection Advisory Panel (AP) of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

A copy of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 14, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–25025 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XS15

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Eight Regional Fishery Management Councils will convene a meeting of representatives of their respective Scientific and Statistical Committee (SSCs) at the Wyndam Sugar Bay Resort, St. Thomas, United States Virgin Islands, November 10–13, 2009.

DATES: The meetings will be held November 10–13, 2009, with travel dates November 9 and 14.

ADDRESSES: The meetings will be held at the Wyndam Sugar Bay Resort, 6500 Estate Smith Bay, St Thomas, U.S. Virgin Islands.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell at the North Pacific Fishery Management Council, telephone: (907) 271–2809 or Diana Martino at the Caribbean Fishery Management Council, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Magnuson Stevens Fishery Conservation and Management Act (MSA) requires that each Council maintain and utilize its SSCs to assist in the development, collection, evaluation, and peer review of information relevant to the development and amendment of fishery

management plans (FMPs). In addition, the MSA mandates that each SSC shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices. On January 16, 2009, the National Marine Fisheries Service (NMFS) issued final revised guidelines for National Standard 1 (NS1) of the MSA on how to comply with the new annual catch limit (ACL) requirements for ending overfishing of federal fisheries. The law requires that ACLs be implemented by 2011. The primary objective of this workshop is to discuss best practices and approaches for setting scientifically based catch limits.

Tuesday, November 10, 2009; 9 a.m. - Peer review: National Standard 2: Update and discussion; Meeting NMFS and Council objectives for best scientific information available and peer reviews; Clarifying the role of SSCs in the review of scientific information; Scientific Uncertainty: Report from NMFS; Quantifying scientific uncertainty in Over Fishing Limits (OFLs); Status report from each SSC on approaches being taken to implement ABCs

Wednesday, November 11, 2009; 8 a.m. - Discussion of Scientific Uncertainty; Can we get to full probabilistic methods for setting buffer between OFL and ABC?; Proxies for unmeasured uncertainty and tiered approaches to setting buffers; Using stock vulnerability in setting level of risk aversion; Hitting the Target: Optimum Yield (OY) Overview including requirements and relationship with ACL/Annual Catch Target (ACTs); Defining Maximum Economic Yield (MEY) and MEY Control Rules; Management Strategy Evaluations; Accounting for management uncertainty including the use of ACTs.

Thursday, November 12, 2009; 8 a.m. - Other NS1 issues: Dealing with data poor situations: Best proxies for Fishing mortality rate associated with maximum sustainable yield (Fmsy); Science advice when only catch is known; How to group stocks into complexes; Rebuilding plans and policies; and a discussion on other contemporary fishery management issues.

Friday, November 13, 2009; 8 a.m.- Discussion and meeting conclusions/recommendations; *12 noon*—Closing remarks. The Agenda is subject to change, and the latest version will be posted at *www.fisherycouncils.org*.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: October 14, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–25024 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT

[9/1/2009 through 10/9/2009]

Firm	Address	Date accepted for filing	Products
Chicago Turnrite Company, Inc.	4459 W. Lake St., Chicago, IL 60624.	9/23/2009	Precision machined parts for the marine, agriculture, railroad, hydraulic and index components industries.
Magil Corporation	500 N. Oakwood Rd., Lake Zurich, IL 60047.	9/24/2009	High tech electric motors designed for elevators.
C Cretors and Company	3243 N. California Avenue, Chicago, IL 60618.	9/23/2009	Food concession and industrial food processing equipment.
Altronics Manufacturing Inc	12 Executive Drive, Unit 2, Hudson, NH 03051.	9/24/2009	Surface mount and thru- hole printed circuit board PCB assembly, and fully integrated services including cables, Electro-mechanical assemblies and full box-build chassis integration.
Jewell Instruments LLC	850 Perimeter Road, Manchester, NH 03103.	9/24/2009	Custom analog and digital panel meters, avionic mechanisms, inertial sensors, precision solenoids and test equipment. They also provide design and engineering services.
Doors and More Inc	2775 Baxter Lane, Bozeman, MT 59718.	9/8/2009	Flush doors.
Distech Systems, Inc	1005 Mt. Read Boulevard, Rochester, NY 14606.	9/24/2009	Automated robotic tray handling systems.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT—Continued

[9/1/2009 through 10/9/2009]

Firm	Address	Date accepted for filing	Products
Innovative Coatings, Inc	24 Jayar Road, Medway, MA 02053.	9/25/2009	Custom molded grips, caps, sleeves and covers.
Champion Bus, Inc./General Coach America.	331 Graham Rd., Imlay City, MI 48444.	9/25/2009	Passenger busses and coaches for public transportation.
CAB Footwear LP	2100 Wyoming Ave., El Paso, TX 79903.	9/25/2009	Leather footwear, custom boots.
S & S Cycle, Inc	14025 County Highway G, Viola, WI 54664–8892.	9/10/2009	Complete engines, performance parts, and stock replacement parts.
ThyssenKrupp Bilstein of America, Inc.	8685 Berk Blvd, Hamilton, OH 45015.	9/25/2009	Shock absorbers.
Montana Sundown dba Rocky Mountain.	1883 Highway 93 S, Hamilton, MT 59840.	10/9/2009	Custom notched logs for log home kits.
Precision Metalcraft, LLC	2853 S. Hillaide St., Wichita, KS 67216–2546.	9/16/2009	High precision stainless steel, titanium & aluminum structural components for the aerospace industry.
Klune Industries, Inc	1800 North 300 West, Spanish Fork, UT 84660.	9/22/2009	Precision machined aircraft components and assemblies.
White Electronic Designs Corporation.	3601 E. University Drive, Phoenix, AZ 85034–7217.	9/23/2009	Semiconductors and related devices.
Turning Solutions, Inc	34 East Harmer Street, Warren, PA 16365.	9/10/2009	Turning Solutions, Inc. specializes in metal and nonmetal turned CNC precision products such as bolts, nuts, rivets, valves, pipe fittings and washers.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 13, 2009.

Bryan Borlik,

Program Director, TAA for Firms.

[FR Doc. E9–25036 Filed 10–16–09; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS20

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Conducting Air-to-Surface Gunnery Missions in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from the U.S. Air Force (USAF), Eglin Air Force Base (Eglin AFB), for renewal of an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting air-to-surface (A–S) gunnery missions in the Gulf of Mexico (GOM). The USAF's activities are considered military readiness activities. Pursuant to the MMPA, NMFS is requesting comments on its proposal to issue an IHA to Eglin AFB to take, by Level B harassment only, several species of marine mammal during the specified activity for a period of 1 year.

DATES: Comments and information must be received no later than November 18, 2009.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *PR1.0648–XS20@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* 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.

A copy of the application containing a list of the references used in this document and NMFS' 2008 Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, ext 156.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not

intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

The National Defense Authorization Act (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' provisions and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

NMFS originally received an application on February 13, 2003, from Eglin AFB for the taking, by harassment, of marine mammals incidental to programmatic mission activities within the Eglin Gulf Test and Training Range (EGTTR). The EGTTR is described as the airspace over the GOM that is controlled by Eglin AFB. A notice of receipt of Eglin AFB's application and Notice of Proposed IHA and request for 30-day public comment published on January 23, 2006 (71 FR 3474). A 1-year IHA was subsequently issued to Eglin AFB for this activity on May 3, 2006 (71 FR 27695, May 12, 2006).

On January 29, 2007, NMFS received a request from Eglin AFB for a renewal of its IHA, which expired on May 2, 2007. This application addendum requested revisions to three components of the IHA requirements: Protected species surveys, ramp-up procedures, and sea state restrictions. A Notice of Proposed IHA and request for 30-day public comment published on May 30, 2007 (72 FR 29974). A 1-year IHA was subsequently issued to Eglin AFB for this activity on December 11, 2008 (73 FR 78318, December 22, 2008) and is effective through December 10, 2009.

On February 17, 2009, NMFS received a request from Eglin AFB for a renewal of its IHA, which is valid through December 10, 2009. No modifications to the activity location, the mission activities, or the mitigation and monitoring measures that are required under the 2008–2009 IHA have been requested by Eglin AFB. Therefore, these activities are identical to what has been described previously (73 FR 78318, December 22, 2008). A–S gunnery operations may potentially impact marine mammals at or near the water surface. Marine mammals could potentially be harassed, injured, or killed by exploding and non-exploding projectiles, and falling debris (USAF, 2002). However, based on analyses provided in the USAF's 2002 Final Programmatic EA (PEA), Eglin's Supplemental Information Request (2003), and NMFS' 2008 EA, as well as for reasons discussed later in this document, NMFS concurs with Eglin that gunnery exercises are not likely to result in any injury or mortality to marine mammals. Potential impacts resulting from A–S test operations include direct physical impacts (DPI) resulting from ordnance. Sixteen marine mammal species or stocks are considered for taking by Level B harassment incidental to Eglin AFB's A–S activities and include: Bryde's whale (*Balaenoptera brydei*); sperm whale (*Physeter macrocephalus*); dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); Atlantic bottlenose dolphin (*Tursiops truncatus*); Atlantic spotted dolphin (*Stenella frontalis*); pantropical spotted dolphin (*S. attenuata*); Cuvier's beaked whale (*Ziphius cavirostris*); Clymene dolphin (*S. clymene*); spinner dolphin (*S. longirostris*); striped dolphin (*S. coeruleoalba*); false killer whale (*Pseudorca crassidens*); pygmy killer whale (*Feresa attenuata*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); and short-finned pilot whale (*Globicephala macrorhynchus*).

Description of the Specified Activity

A–S gunnery missions, a ''military readiness activity'' as defined under 16 U.S.C. 703 note, involve surface impacts of projectiles and small underwater detonations with the potential to affect cetaceans that may occur within the EGTTR. These missions typically involve the use of 25-mm (0.98-in), 40-mm (1.57-in), and 105-mm (4.13-in) gunnery rounds containing, 0.0662 lb (30 g), 0.865 lb (392 g), and 4.7 lbs (2.1 kg) of explosive, respectively. Live rounds must be used to produce a visible surface splash that must be used to ''score'' the round (the impact of inert rounds on the sea surface would not be detected). The USAF has developed a 105-mm training round (TR) that contains less than 10 percent of the amount of explosive material (0.35 lb; 0.16 kg) as compared to the ''Full-Up'' (FU) 105-mm (4.13 in) round. The TR was developed as one method to mitigate effects on marine life during nighttime A–S gunnery exercises when visibility at the water surface is poor. However, the TR cannot be used in the daytime since the amount of explosive material is insufficient to be detected from the aircraft.

Water ranges within the EGTTR that are typically used for the gunnery operations are located in the GOM offshore from the Florida Panhandle (areas W–151A, W–151B, W–151C, and W–151D as shown in Figure 1–2 in Eglin's 2003 application). Data indicate that W–151A (Figure 1–3 in Eglin's application) is the most frequently used water range due to its proximity to Hurlburt Field, but activities may occur anywhere within the EGTTR.

Eglin AFB proposes to conduct these mission activities year round during both daytime and nighttime hours. Therefore, NMFS proposes to make the IHA effective for an entire year from December 11, 2009 (after expiration of the current IHA) through December 10, 2010.

As required under the 2006 IHA, the AC–130 gunship aircraft was to conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 1,500 ft (457 m). Based on an

amendment requested by Eglin AFB, NMFS required an operational altitude of approximately 4,500 to 10,000 ft (1,372–3,048 m) in the 2008 IHA. Ascent occurs over a 10–15 minute period. Eglin AFB has noted that the search area for these orbits ensures that no vessels (or protected species) are within an area of 5 nm (9.3 km) of the target. The AC–130 continues orbiting the selected target point as it climbs to the mission-testing altitude. During the low altitude orbits and the climb to testing altitude, aircraft crew visually scan the sea surface within the aircraft's orbit circle for the presence of vessels and protected species. Primary responsibility for the surface scan is on the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC–130's optical and electronic sensors are also employed for target clearance. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target area and repeat the clearance procedures. A typical distance from the coast for this activity is at least 15 mi (24 km).

When offshore, the crews can scan a 5-nm (9.3-km) radius around the potential impact area to ensure it is clear of surface craft, marine mammals, and sea turtles. Scanning is accomplished using radar, all-light television (TV), infrared sensors (IR), and visual means. An alternative area would be selected if any cetaceans or vessels were detected within a 5-nm (9.3 km) search area. Once the scan is completed, Mk-25 flares are dropped and the firing sequence is initiated.

A typical gunship mission lasts approximately 5 hr without refueling and 6 hr when air-to-air refueling is accomplished. A typical mission includes the following sequence of events: (1) 30 min for take-off and to perform airborne sensor alignment, align electro-optical sensors (IR and TV) to heads-up display; (2) 1.5 to 2 hr of dry fire (no ordnance expended) and includes transition time; (3) 1.5 to 2 hr of live fire, and includes clearing the area and transiting to and from the range (actual firing activities typically do not exceed 30 min); (4) 1 hr air-to-air refueling, if and when performed; and (5) 30 min of transition work (take-offs, approaches, and landings-pattern work).

The guns are fired during the live-fire phase of the mission. The actual firing can last from 30 min to 1.5 hr but is typically completed in 30 min. The number and type of A–S gunnery munitions deployed during a mission varies with each type of mission flown. In addition to the 25-, 40-, and 105-mm rounds, marking flares are also deployed as targets. All guns are fired at a specific target in the water, usually an Mk-25 flare, starting with the lowest caliber ordnance or action with the least impact and proceeding to greater caliber sizes. To establish the test target area, two Mk-25 flares are deployed into the center of the 5-nm (9.3-km) radius cleared area (visually clear of aircraft, ships, and surface marine species) on the water's surface. The flare's burn time normally lasts 10 to 20 min but could be much less if actually hit with one of the ordnance projectiles; however, some flares have burned as long as 40 min. Live fires are a continuous event with pauses during the firing usually well under a minute and rarely from 2 to 5 min. Firing pauses would only exceed 10 min if surface boat traffic or marine protected species caused the mission to relocate; if aircraft, gun, or targeting system problems existed; or if more flares needed to be deployed. The Eglin Safety Office has described the gunnery missions as having 95-percent containment with a 99-percent confidence level within a 5-m (16.4-ft) area around the established flare target test area.

Live-Fire Event: 25-mm Round

The 25-mm (0.98-in) firing event in a typical mission includes approximately 500 to 1,000 rounds. These rounds are fired in short bursts. These bursts last approximately 2–3 s with approximately 100 rounds per burst. Based on the very tight target area and extremely small ''miss'' distance, these bursts of rounds all enter the water within a 5-m (16.4-ft) area. Therefore, when calculations of the marine mammal Zone of Impact (ZOI) and take estimates are made later in this document for the 25-mm rounds, calculations will be based on the total number of rounds fired per year divided by 100.

Live-Fire Event: 40-mm Round

The 40-mm (1.57 in) firing event of a typical mission includes approximately 10 s with approximately 20 rounds per burst. Based on the very tight target area and extremely small ''miss'' distance, these bursts of rounds all enter the water within a 5-m (16.4 ft) area. Therefore, when calculations of the marine mammal ZOI and take estimates are made later in this document for the 40-mm rounds, calculations will be based on the total number of rounds fired per year divided by 20.

Live-Fire Event: 105-mm Round

The 105-mm firing event of a typical mission includes approximately 20 rounds. These rounds are not fired in bursts but as single shots. The 105-mm firing event lasts approximately 5 min with approximately two rounds per minute. Due to the single firing event of the 105-mm round, the peak pressure of each single 105-mm round is measured at a given distance (90 m (295 ft) for the 105-mm TR and 216 m (709 ft) for the 105-mm FU).

As described in Eglin's 2003 application, gunnery testing in this request includes historical baseline yearly amounts in addition to proposed nighttime gunnery missions. Daytime gunnery testing uses the 105-mm FU round and nighttime gunnery training is proposed using the 105-mm TR. The number of 105-mm rounds including nighttime operations would amount to 1,742. As shown in detail in Tables 1 and 2, Eglin proposes to conduct a total of 28 daytime missions and 263 nighttime missions annually, expending 3,832 rounds in the daytime and 30,802 rounds at night (242 105-mm FU and 1,500 rounds would be the 105-mm TR).

TABLE 1—SUMMARY OF DAYTIME GUNNERY TESTING OPERATIONS IN THE EGTTR

Test area	Category	Expendable	Condition	Baseline quantity of expendables	Number of missions	Number of events
W–151A	GUN	105 mm HE	LIVE	128	6	18
		25 mm HEI	LIVE	1,275	1	1
		40 mm HEI	LIVE	536	6	18
W–151B	GUN	105 mm HE	LIVE	46	2	6
		25 mm HEI	LIVE	294	1	1
		40 mm HEI	LIVE	146	1	3
W–151C	GUN	105 mm HE	LIVE	10	1	3

TABLE 1—SUMMARY OF DAYTIME GUNNERY TESTING OPERATIONS IN THE EGTTR—Continued

Test area	Category	Expendable	Condition	Baseline quantity of expendables	Number of missions	Number of events
		25 mm HEI	LIVE	142	1	1
		40 mm HEI	LIVE	50	1	3
W–151D	GUN	105 mm HE	LIVE	39	2	6
		25 mm HEI	LIVE	567	1	1
		40 mm HEI	LIVE	198	2	6
W–151S	GUN	105 mm HE	LIVE	19	1	3
		25 mm HEI	LIVE	283	1	1
		40 mm HEI	LIVE	99	1	3
Total				3,832	28	74

TABLE 2—SUMMARY OF NIGHTTIME GUNNERY TRAINING OPERATIONS IN THE EGTTR

Test area	Category	Expendable	Condition	Alt. 3 quantity	Number of missions	Number of events
W–151A	GUN	105 mm TR	LIVE	902	45	135
		25 mm HEI	LIVE	7,864	8	8
		40 mm HEI	LIVE	9,811	102	306
W–151B	GUN	105 mm TR	LIVE	255	13	39
		25 mm HEI	LIVE	1,452	2	2
		40 mm HEI	LIVE	3,023	31	93
W–151C	GUN	105 mm TR	LIVE	197	9	36
		25 mm HEI	LIVE	2,301	2	2
		40 mm HEI	LIVE	2,302	24	72
W–151D	GUN	105 mm TR	LIVE	133	7	21
		25 mm HEI	LIVE	830	1	1
		40 mm HEI	LIVE	1,583	16	48
W–151S	GUN	105 mm TR	LIVE	13	1	3
		25 mm HEI	LIVE	54	1	1
		40 mm HEI	LIVE	82	1	3
Total				30,802	263	770

Description of Marine Mammals in the Area of the Specified Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. Of these 29 species of marine mammals, approximately 21 may be found within the proposed action area, the EGTTR. These species are the Bryde's whale, sperm whale, dwarf sperm whale, pygmy sperm whale, Atlantic bottlenose dolphin, Atlantic spotted dolphin, pantropical spotted dolphin, Blainville's beaked whale (*Mesoplodon densirostris*), Cuvier's beaked whale, Gervais' beaked whale (*M. europaeus*), Clymene dolphin, spinner dolphin, striped dolphin, killer whale (*Orcinus orca*), false killer whale, pygmy killer whale, Risso's dolphin, Fraser's dolphin (*Lagenodelphis hosei*), melon-headed whale (*Peponocephala electra*), rough-toothed dolphin, and short-finned pilot whale. Of these species, only the sperm whale is listed as endangered under the Endangered Species Act (ESA) and as depleted throughout its range under the MMPA. While some of the other species listed here have depleted status under the MMPA, none of the GOM stocks of those species are considered depleted. More detailed information on these species can be found in Wursig *et al.* (2000), NMFS' 2008 EA (*see* **ADDRESSES**), and in the NMFS U.S. Atlantic and GOM Stock Assessment Reports (Waring *et al.,* 2009). This latter document is available at: *http://www.nefsc.noaa.gov/publications/tm/tm210/*. The West Indian manatee (*Trichechus manatus*) is managed by the U.S. Fish and Wildlife Service and is not considered further in this proposed IHA **Federal Register** notice.

The species most likely to occur in the area of Eglin AFB's proposed activities include: Atlantic bottlenose dolphin; Atlantic spotted dolphin; pantropical spotted dolphin; spinner dolphin; striped dolphin; Risso's dolphin; Clymene dolphin; and dwarf and pygmy sperm whales. Blainville's beaked whale, Gervais' beaked whale, killer whale, Fraser's dolphin, and melon-headed whales are rare in the project area and are not anticipated to be impacted by the A–S gunnery mission activities. Therefore, these five species are not considered further in this proposed IHA **Federal Register** notice.

Cetacean abundance estimates for the study area are derived from GulfCet II (Davis *et al.,* 2000) aerial surveys of the continental shelf within the Minerals Management Service (MMS) Eastern Planning Area, an area of 70,470 km^2. Texas A&M University and NMFS conducted the surveys from 1996 to 1998. Abundance and density data from the aerial survey portion of the survey best reflect the occurrence of cetaceans within the EGTTR, given that the survey area overlaps approximately one-third of the EGTTR and nearly the entire continental shelf region of the EGTTR where military activity is highest. Cetaceans inhabiting the study area may be grouped as odontocetes (toothed whales, including dolphins) or mysticetes (baleen whales). Most of the cetaceans occurring in the Gulf are odontocetes. Very few baleen whales exist in the Gulf and most would not be expected to occur within the study area given the known distribution of these species. Table 3–5 in the USAF 2002 PEA lists the abundance and density of cetacean populations in the northern

GOM, as estimated from NMFS aerial surveys. However, in order to provide better species conservation and protection, the species density estimate data were adjusted by incorporating: (1) Temporal and spatial variations; (2) surfaced and submerged variations; and (3) overall density estimate confidence (Table 3–1 in Eglin AFB's 2003 application; *see* **ADDRESSES**).

The GulfCet II aerial surveys identified different density estimates of marine mammals for the shelf and slope geographic locations. Accordingly, the greatest species density estimate available for any given location was utilized for conservative impact assessments. The final adjusted density incorporates marine mammal submergence factors and a confidence level of the density estimates. The GulfCet II surveys focus on enumerating animals detected at the ocean surface and therefore do not account for submerged animals. The percent time that an animal is submerged versus at the surface was obtained from Moore and Clarke (1998), and the density estimates were adjusted accordingly. Additionally, the standard deviations of the densities were calculated, and the information was used to provide an approximately 99 percent confidence level for the adjusted densities. The adjusted densities are outlined in Table 3–1 in Eglin AFB's 2003 application.

Potential Effects of the Specified Activity on Marine Mammals

A–S gunnery operations may potentially impact marine mammals at or near the water surface. Marine mammals could potentially be harassed, injured or killed by exploding and non-exploding projectiles, and falling debris (USAF, 2002). However, based on analyses provided in the USAF's Final PEA, Eglin's Supplemental Information Request (2003), and NMFS' 2008 EA, NMFS concurs with Eglin that gunnery exercises are not likely to result in any injury or mortality to marine mammals.

Explosive criteria and thresholds for assessing impacts of explosions on marine mammals were discussed by NMFS in detail in its issuance of an IHA for Eglin's Precision Strike Weapon testing activity (70 FR 48675, August 19, 2005) and are not repeated here. Please refer to that document for this background information. However, one part of the analysis has changed. That information is provided here.

Subsequent to the issuance of the USAF 2002 PEA, NMFS updated one of the dual criteria related to the onset level for temporary threshold shift (TTS; a Level B harassment). The USAF 2002 PEA describes the onset of TTS by a single explosion (impulse) based on the criterion in use at that time. Newly available information based on lab controlled experiments that used a seismic watergun to induce TTS in one beluga whale and one bottlenose dolphin (Finneran *et al.,* 2002) showed measured TTS_2 (TTS level 2 min after exposure) was 7 and 6 dB in the beluga at 0.4 and 30 kHz, respectively, after exposure to intense single pulses at 226 dB re: 1 μPa p-p (peak to peak). This sound pressure level (SPL) is equivalent to 23 pounds per square inch (psi). Hearing threshold returned to within 2 dB of the pre-exposure value within 4 min of exposure. No TTS was observed in the bottlenose dolphin at the highest exposure condition (228 dB re 1 μPa p-p). Therefore, NMFS updated the SPL from impulse sound that could induce TTS to 23 psi, from the previous 12 psi. Table 3 in this document outlines the acoustic criteria used by NMFS when addressing noise impacts from explosives. These criteria remain consistent with criteria established for other activities in the EGTTR and other acoustic activities authorized under sections 101(a)(5)(A) and (D) of the MMPA. The 23 psi criterion is used in this document and NMFS' 2008 EA for evaluating the potential for the onset of TTS (Level B harassment) in marine mammals. Additional information on the derivation of the 23 psi criterion can be found in the *Final Environmental Impact Statement/Overseas Environmental Impact Statement for the Shock Trial of the Mesa Verde (LPD 19)* (Department of the Navy, 2008).

TABLE 3—CURRENT NMFS ACOUSTIC CRITERIA WHEN ADDRESSING HARASSMENT FROM EXPLOSIVES

Level B Behavior	176 dB ⅓ Octave SEL (sound energy level).
Level B TTS Dual Criterion.	182 dB ⅓ Octave SEL.
Level A PTS (permanent threshold shift).	205 dB SEL.
Level B Dual Criteria	23 psi.
Level A Injury	13 psi-msec.
Mortality	30.5 psi-msec.

Direct Physical Impacts (DPI)

Potential impacts resulting from A–S test operations include DPI resulting from ordnance. DPI could result from inert bombs, gunnery ammunition, and shrapnel from live missiles falling into the water. Marine mammals swimming at the surface could potentially be injured or killed by projectiles and falling debris if not sighted and firing discontinued. Mainly due to the comparatively large number of rounds expended, small arms gunnery operations offers a worst-case scenario for evaluating DPI of EGTTR operations. Some small-arms gunnery rounds contain small amounts of explosives, but the majority do not. However, the possibility of DPI to marine mammals is considered highly unlikely. Therefore, the risk of injury or mortality is low. The assumptions made by Eglin AFB for DPI calculations can be found in the USAF 2002 Final PEA under the analysis for Alternative 1. Approximately 606 small-arms gunnery firing events comprise the baseline level of potential DPI events, as shown here in Table 4. DPI impacts are only anticipated to affect marine species at or very near the ocean surface.

Mortality resulting from DPI or the resulting sounds generated into the water column from detonations was determined to be highly unlikely and was not considered further by Eglin AFB or NMFS because of the small amounts of net explosive weight for each of the rounds fired in the EGTTR and the proposed mitigation measures discussed later in this document (*see* ''Proposed Mitigation'' section). Impacts to marine mammals are anticipated to be limited to Level B harassment in the form of temporary changes in behavior or temporary changes in hearing thresholds (*i.e.,* TTS).

TABLE 4—EGTTR AIR-TO-SURFACE GUNNERY/SMALL ARMS OPERATIONS AS EVENTS

Activity/EGTTR event	Percentage of events	Number of events
Small Arms 50 Cal Ball Events	16.3	99
Small Arms 5.56 Linked Events	0.8	5
Small Arms 7.62 mm Ball Events	82.8	502

TABLE 4—EGTTR AIR-TO-SURFACE GUNNERY/SMALL ARMS OPERATIONS AS EVENTS—Continued

Activity/EGTTR event	Percentage of events	Number of events
Total Baseline—Small Caliber Events	100	606

Anticipated Effects on Habitat

The primary source of marine mammal habitat impact is noise resulting from gunnery missions. However, the noise does not constitute a long-term physical alteration of the water column or bottom topography, as the occurrences are of limited duration and are intermittent in time. The target flare's burn time normally lasts 10 to 20 min. Given this short time of a lighted environment and the variable locations they are dropped, no increases in density of phytoplankton or other organisms introducing primary productivity into the waters are expected to affect marine mammal habitat or populations. Also, live fires are a continuous event with pauses during the firing usually well under a minute and rarely from 2 to 5 min. Likewise, surface vessels associated with the missions are present in limited duration and are intermittent as well.

Other sources that may affect marine mammal habitat were considered and potentially include the introduction of fuel, chaff, debris, ordnance, and chemical residues into the water column. Chemical residues can enter the water through ammunition, flares, drones, missiles, and smoke. However, the small quantities of chemical compounds that may potentially be introduced into the marine waters of the eastern GOM would rapidly disperse. These additions would be too small to adversely impact the GOM waters.

Based on this information, NMFS has preliminarily determined that the proposed A–S gunnery mission activities will not have any impact on the food or feeding success of marine mammals in the northern GOM. Additionally, no loss or modification of the habitat used by cetaceans in the GOM is expected. Marine mammals are anticipated to temporarily vacate the area of live fire events. However, these events usually do not last more than 90 to 120 min at a time, and animals are anticipated to return to the activity area during periods of non-activity. Thus, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the ITA process such that ''least practicable impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity''. The training activities described in Eglin AFB's application are considered military readiness activities.

The mitigation measures proposed for inclusion in the IHA are the same as those required in the current IHA (73 FR 78318, December 22, 2008). These measures are virtually identical to the mitigation measures that were required in the 2006 IHA (71 FR 27695, May 12, 2006). There were only three differences in the mitigation and monitoring measures between the 2006 and 2008 IHAs. Eglin AFB's 2007 application addendum requested revisions to three components of the IHA requirements: Protected species surveys, ramp-up procedures, and sea state restrictions. A discussion of the differences in the requirements can be found in the 2008 IHA Notice of Issuance (73 FR 78318, December 22, 2008) and NMFS' 2008 EA. The revisions to those three requirements are also included in this proposed IHA. However, the explanations as to why Eglin AFB requested the changes and NMFS' determinations specific to those three requirements are not repeated in this document. Readers should refer to either the 2008 IHA notice or NMFS' 2008 EA (*see* **ADDRESSES**) for the full explanation.

Development of the Training Round

The largest type of ammunition used during typical gunnery missions is the 105-mm (4.13-in) round containing 4.7 lbs (2.1 kg) of high explosive (HE). This is several times more HE than that found in the next largest round (40 mm/1.57 in). As a mitigation technique, the USAF developed a 105-mm TR that contains only 0.35 lb (0.16 kg) of HE. The TR was developed to dramatically reduce the risk of harassment at night and Eglin AFB anticipates a 96 percent reduction in impact by using the 105-mm TR.

Visual Mitigation

Areas to be used in gunnery missions are visually monitored for marine mammal presence from the AC–130 aircraft prior to commencement of the mission. If the presence of one or more marine mammals is detected, the target area will be avoided. In addition, monitoring will continue during the mission. If marine mammals are detected at any time, the mission will halt immediately and relocate as necessary or suspended until the marine mammal has left the area. Daytime and nighttime visual monitoring will be supplemented with IR and TV monitoring. As nighttime visual monitoring is generally considered to be ineffective at any height, the EGTTR missions will incorporate the TR.

Ramp-Up Procedures

The rationale for requiring ramp-up procedures is that this process may allow animals to perceive steadily increasing noise levels and to react, if necessary, before the noise reaches a threshold of significance. The AC–130 gunship's weapons are used in two activity phases. First, the guns are checked for functionality and calibrated. This step requires an abbreviated period of live fire. After the guns are determined to be ready for use, the mission proceeds under various test and training scenarios. This second phase involves a more extended period of live fire and can incorporate use of one or any combination of the munitions available (25-, 40-, and 105-mm rounds). The ramp-up procedure shall be required for the initial gun calibration, and, after this phase, the guns may be fired in any order. Eglin and NMFS believe this process will allow marine species the opportunity to respond to increasing noise levels. If an animal leaves the area during ramp-up, it is unlikely to return while the live-fire

mission is proceeding. This protocol allows a more realistic training experience. In combat situations, gunship crews would not likely fire the complete ammunition load of a given caliber gun before proceeding to another gun. Rather, a combination of guns would likely be used as required by an evolving situation. An additional benefit of this protocol is that mechanical or ammunition problems on an individual gun can be resolved while live fire continues with functioning weapons. This also diminishes the possibility of a lengthy pause in live fire, which, if greater than 10 min, would necessitate Eglin's re-initiation of protected species surveys (described next).

Other Mitigation

In addition to the development of the TR, the visual mitigation, and the ramp-up procedures already described in this document, additional mitigation measures to protect marine life were included in the 2006 and 2008 IHAs and are proposed for inclusion in this proposed IHA. These requirements include:

(1) If daytime weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals and other marine life, A–S gunnery exercises must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Daytime test firing will be conducted only when sea surface conditions are sea state 4 or less on the Beaufort scale.

(2) Prior to each firing event, the aircraft crew will conduct a visual survey of the 5-nm (9.3-km) wide prospective target area to attempt to sight any marine mammals that may be present (the crew will do the same for sea turtles and Sargassum rafts). The AC–130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 6,000 ft (1,829 m). Provided marine mammals (and other protected species) are not detected, the AC–130 can then continue orbiting the selected target point as it climbs to the mission testing altitude. During the low altitude orbits and the climb to testing altitude, the aircraft crew will visually scan the sea surface within the aircraft's orbit circle for the presence of marine mammals. Primary emphasis for the surface scan will be upon the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC–130's optical and electronic sensors will also be employed for target clearance. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target and repeat the clearance procedures. If multiple firing events occur within the same flight, these clearance procedures will precede each event.

(3) The aircrews of the A–S gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (less than or equal to 12 nm (22 km)). This would potentially restrict most gunnery activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (*e.g.,* endangered sperm whales) typically reside.

(4) Observations will be accomplished using all-light TV, IR sensors, and visual means for at least 60 min prior to each exercise.

(5) Aircrews will utilize visual, night vision goggles, and other onboard sensors to search for marine mammals while performing area clearance procedures during night-time pre-mission activities.

(6) If any marine mammals are sighted during pre-mission surveys or during the mission, activities will be immediately halted until the area is clear of all marine mammals for 60 min or the mission location relocated and resurveyed.

(7) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with NMFS and appropriate changes must be made, prior to conducting the next air-to-surface gunnery exercise.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicability of implementation, and impact on the effectiveness of the military-readiness activity.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicability of implementation, and impact on the effectiveness of the military-readiness activity.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

The Incidental Take Statement in NMFS' Biological Opinion on this action required certain monitoring measures to protect marine life. NMFS also imposed these same requirements, as well as additional ones, under Eglin AFB's 2006 and 2008 IHAs as they related to marine mammals. NMFS is proposing to include these same measures in the 2009 IHA (if issued). They are:

(1) The A–S gunnery mission aircrews will participate in the marine mammal species observation training. Designated crew members will be selected to receive training as protected species observers. Observers will receive training in protected species survey and identification techniques.

(2) Aircrews will initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4,572 to 6,096 m) elevation, and then initiate a spiraling descent down to an observation altitude of approximately 6,000 ft (1,829 m) elevation. Rates of descent will occur over a 3 to 5 min time frame.

(3) Eglin will track their use of the EGTTR for test firing missions and protected species observations, through the use of mission reporting forms.

(4) A–S gunnery missions will coordinate with next-day flight activities to provide supplemental post-

mission observations for marine mammals in the operations area of the previous day.

(5) A summary annual report of marine mammal observations and A–S activities will be submitted to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources either at the time of a request for renewal of an IHA or 90 days after expiration of the current IHA if a new IHA is not requested. This annual report must include the following information: (i) Date and time of each air-to-surface gunnery exercise; (ii) a complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of A–S gunnery exercises on marine mammal populations; (iii) results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the gunnery exercises and number of marine mammals (by species if possible) that may have been harassed due to presence within the 5-nm activity zone; and (iv) a detailed assessment of the effectiveness of sensor-based monitoring in detecting marine mammals in the area of A–S gunnery operations.

(6) If any dead or injured marine mammals are observed or detected prior to testing, or injured or killed during live fire, a report must be made to NMFS by the following business day.

(7) Any unauthorized takes of marine mammals (*i.e.,* injury or mortality) must be immediately reported to NMFS and to the respective stranding network representative.

Estimated Take by Incidental Harassment

As it applies to a ''military readiness activity'', the definition of harassment is (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Only take by Level B harassment is anticipated as a result of the A–S gunnery mission activities. The exercises are expected to only affect animals at or very near the surface of the water. Cetaceans in the vicinity of the exercises may incur temporary changes in behavior and/or temporary changes in their hearing thresholds. Based on the mitigation and monitoring measures described earlier in this document, no injury or mortality of marine mammals is anticipated as a result of the A–S gunnery mission activities.

DPI impacts are only anticipated to affect marine species at or very near the ocean surface. As a result, in order to calculate impacts, Eglin used corrected species densities (*see* Table 4–23 in the USAF's Final PEA) to reflect the surface interval population, which is approximately 10 percent of densities calculated for distribution in the total water column. As shown in Table 5 in this document (and thereby correcting PEA Table 4–23), the impacts to marine mammals swimming at the surface that could potentially be injured or killed by projectiles and falling debris was determined to be an average of 0.2059 marine mammals per year. However, NMFS believes that the mitigation measures that Eglin proposes under this action would significantly reduce even these low levels.

In addition to small arms, Eglin calculated the potential for other non-explosive items (bombs, missiles, and drones) to impact marine mammals. The number of annual events expected are 551 bombs, 1,183 missiles, and 99 drones. As shown in the 2002 Final PEA and Table 6 in this document, the potential for any non-small arms/non-gunnery DPI to marine mammals is extremely remote and can, therefore, be discounted.

Similar to non-small arms/non-gunnery DPI impacts, DPI impacts from gunnery activities may also affect marine mammals in the surface zone. Again, DPI impacts are anticipated to affect only marine mammals at or near the ocean surface and not animals that are submerged at the time. Accordingly, the density estimates have been adjusted to indicate surface animals only being potentially affected. Using the firing methodology explained earlier in this document, Tables 7 and 8 demonstrate that the potential for any DPI from gunnery activities are extremely remote and can be discounted. Using the largest round (105 mm), it would take approximately 120 yr to impact a marine mammal from daytime gunnery activities and approximately 27 yr to impact a marine mammal from nighttime gunnery activities.

TABLE 5—POTENTIAL SMALL ARMS DPI IMPACTS (ANNUAL) TO MARINE MAMMAL SPECIES

Species	Density (#/km^2)	Adjusted density (#/km^2)	Impact zone area (km^2)	Animals in impact zone (#)	Years to impact 1 animal
Cetaceans	4.381	0.4381	0.047874	2.10E–02	48
Threatened and Endangered Cetaceans	0.011	0.0011	0.047874	5.27E–05	18,989

TABLE 6—POTENTIAL NON-SMALL ARMS/NON-GUNNERY DPI IMPACTS (ANNUAL) TO MARINE MAMMAL SPECIES

Species	Density (#/km^2)	Adjusted density (#/km^2)	Impact zone area (km^2)	Animals in impact zone (#)	Years to impact 1 animal
Cetaceans	4.381	0.4381	0.00688	0.003014128	332
Threatened and Endangered Cetaceans	0.011	0.0011	0.00688	0.000007568	132,135

TABLE 7—POTENTIAL DAYTIME GUNNERY DPI IMPACTS (ANNUAL) TO MARINE CETACEANS

Species/shell size	Density (#/km)	Adjusted density (#/km^2)	Impact zone area (km^2)	Number of events (#)	Animals in impact zone (#)	Years to impact 1 animal (#)
Cetacea (25 mm)	4.381	0.4381	.00007854	26	.000881198	1,135
Cetacea (40 mm)	4.381	0.4381	.00007854	51	.001770311	565
Cetacea (105mm)	4.381	0.4381	.00007854	242	.008326827	120

TABLE 8—POTENTIAL NIGHTTIME GUNNERY DPI IMPACTS (ANNUAL) TO MARINE CETACEANS

Species/shell size	Density (#/km)	Adjusted density (#/km^2)	Impact zone area (km^2)	Number of events (#)	Animals in impact zone (#)	Years to impact 1 animal (#)
Cetacea (25 mm)	4.381	0.4381	.00007854	125	.004287972	233
Cetacea (40 mm)	4.381	0.4381	.00007854	723	.024873814	40
Cetacea (105mm)	4.381	0.4381	.00007854	1061	.036507285	27

Estimating the impacts to marine mammals from underwater detonations is difficult due to complexities of the physics of explosive sound under water and the limited understanding with respect to hearing in marine mammals. Detailed assessments were made in the notice for the 2006 and 2008 IHAs on this action (71 FR 27695, May 12, 2006; 73 FR 78318, December 22, 2008) and are repeated in this **Federal Register** notice. These assessments used, and improved upon, the criteria and thresholds for marine mammal impacts that were developed for the shock trials of the *USS SEAWOLF* and the *USS Winston S. Churchill* (DDG–81) (Navy, 1998; 2001). The criteria and thresholds used in those actions were adopted by NMFS for use in calculating incidental takes from explosives. Criteria for assessing impacts from Eglin AFB's A–S gunnery exercises include: (1) Mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing-related and non-hearing related; and (3) harassment, as determined by a temporary loss of some hearing ability and behavioral reactions. Similar to the effects from DPI, due to the small amounts of net explosive weight (NEW) for each of the rounds fired in the EGTTR and the mitigation measures proposed by NMFS for implementation, mortality resulting from either DPI or the resulting sounds generated into the water column from detonations was determined to be highly unlikely and was not considered further by Eglin AFB or NMFS.

Permanent hearing loss is considered an injury and is termed permanent threshold shift (PTS). NMFS, therefore, categorizes PTS as Level A harassment. Temporary loss of hearing ability is termed TTS, meaning a temporary reduction of hearing sensitivity which abates following noise exposure. TTS is considered non-injurious and is categorized as Level B harassment. NMFS recognizes dual criteria for TTS, one based on peak pressure and one based on the greatest ⅓ octave sound exposure level (SEL) or energy flux density level (EFDL), with the more conservative (*i.e.,* larger) of the two criteria being selected for impacts analysis (note: SEL and EFDL are used interchangeably, but with increasing scientific preference for SEL). The peak pressure metric used in previous shock trials to represent TTS was 12 pounds per square inch (psi) which, for the NEW used, resulted in a zone of possible Level B harassment approximately equal to that obtained by using a 182 decibel (dB) re 1 microPa^2-s, total EFDL/SEL metric. The 12-psi metric is largely based on anatomical studies and extrapolations from terrestrial mammal data (*see* Ketten, 1995; Navy, 1999 (Appendix E, *Churchill* FEIS; and 70 FR 48675 (August 19, 2005)) for background information). However, the results of a more recent investigation involving marine mammals suggest that, for small charges, the 12-psi metric is not an adequate predictor of the onset of TTS but that one should use 23 psi. This explanation is provided earlier in this document.

Documented behavioral reactions occur at noise levels below those considered to cause TTS in marine mammals (Finneran *et al.,* 2002; Schlundt *et al.,* 2000; Finneran and Schlundt, 2004). In controlled experimental situations, behavioral effects are typically defined as alterations of trained behaviors. Behavioral effects in wild animals are more difficult to define but may include decreased ability to feed, communicate, migrate, or reproduce. Abandonment of an area due to repeated noise exposure is also considered a behavioral effect. Analyses in other sections of this document refer to such behavioral effects as ''sub-TTS Level B harassment.'' Schlundt *et al.* (2000) exposed bottlenose dolphins and beluga whales to various pure-tone sound frequencies and intensities in order to measure underwater hearing thresholds. Masking is considered to have occurred because of ambient noise environment in which the experiments took place. Sound levels were progressively increased until behavioral alterations were noted (at which point the onset of TTS was presumed). It was found that decreasing the sound intensity by 4 to 6 dB greatly decreased the occurrence of anomalous behaviors. The lowest sound pressure levels, over all frequencies, at which altered behaviors were observed, ranged from 178 to 193 dB re 1 μPa for the bottlenose dolphins and from 180 to 196 dB re 1 μPa for the beluga whales. Thus, it is reasonable to consider that sub-TTS (behavioral) effects occur at approximately 6 dB below the TTS-inducing sound level, or at approximately 176 dB in the greatest ⅓ octave band EFDL/SEL.

Table 3 (earlier in this document) summarizes the relevant thresholds for levels of noise that may result in Level A harassment (injury) or Level B harassment via TTS or behavioral disturbance to marine mammals.

Mortality and injury thresholds are designed to be conservative by considering the impacts that would occur to the most sensitive life stage (*e.g.,* a dolphin calf). Table 9 provides the estimated ZOI radii for the EGTTR ordnance. At this time, there are no empirical data or information that would allow NMFS to establish a peak pressure criterion for sub-TTS behavioral disruption.

TABLE 9—ESTIMATED RANGE FOR A ZONE OF IMPACT (ZOI) DISTANCE FOR THE EGTTR ORDNANCE

Expendable	Level A harassment-injurious(205 dB) EFD (m)	Level B harassment non-injurious (182 dB) EFD for TTS (m)	Level B harassment non-injurious (23 psi) for TTS (m)	Level B harassment-non-injurious (176 dB) EFD for behavior (m)
105 mm FU	0.79	11.1	216	22.1
105-mm TR	0.22	3.0	90	6.0
40-mm HE	0.33	4.7	122	9.4
25-mm HE	0.11	1.3	49	2.6

FU=Full-up; TR=Training Round; HE=High Explosive

As mentioned previously, the EGTTR live fire events are continuous events with pauses during the firing usually well under a minute and rarely from 2 to 5 min. Live fire typically occurs within a 30 min time frame, including all ordnance fired: 25 mm (Phase I), 40 mm (Phase II), and 10 mm (Phase III), and where the 105-mm ordnance are fired as separate rounds with up to 30-s intervals, the 25-mm and the 40-mm are often fired in multiple bursts. These bursts include multiple rounds (25 to 100) within a 10- to 20-s time frame. Eglin notes that even if animal avoidance once firing commences is not considered, the average swim speed (1.5 m/s) of an animal would not allow sufficient time for new animals to re-enter the Level B harassment ZOI (23 psi) within the time frame of a single burst. As such, only the peak pressure of a single round is measured per burst and experienced at a given distance (49 m (161 ft; Phase I), 122 m (400 ft; Phase II)).

For daytime firing, it is assumed that the average swim speed per cetacean is approximately 3 knots or 1.5 m/sec. As a conservative scenario, Eglin assumes that there is one animal present within or near the 216-m Level B harassment (TTS) ZOI (FU 105-mm round ZOI) which may be potentially ensonified within the 23-psi TTS exposure at the time that the 105-mm live firing begins. Density distributions have assumed an even distribution of approximately 4.38 animals/km^2 or approximately 500 m (1640 ft) apart (all species) for the take estimate analysis. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 216-m (709 ft) ZOI (23-psi TTS ZOI) in approximately 5.5 min, assuming a straight line path. With live-fire events for the 105-mm occurring at a rate of approximately 2 rounds/min, nearly one half (or 10 rounds) of the total 105-mm rounds (20 rounds) would potentially be expended within this 5.5 min time frame. If the concept of marine mammal avoidance of an area once firing commences is not considered, an average swim speed of 1.5 m/s (4.9 ft/s) would allow sufficient time for new animals to re-enter the 23-psi TTS impact area. Allowing for a potential 2 min break in firing after 10 rounds are expended, it is, therefore, conservative and reasonable to assume that nearly 3 to 4 individual animals could be exposed to the 23-psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and Level B harassment take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that although single animals may be ensonified more than once due to the time required to exit the 23 psi TTS ZOI, animals are not considered to be ''taken'' more than once for the purposes of estimating take levels.

Similarly, as a conservative approach for nighttime firing, Eglin assumes that there is one animal present within or near the 90-m (295-ft) ZOI (105-mm TR ZOI) which may be potentially ensonified within the 23-psi TTS exposure zone at the time that the 105-mm round live firing phase begins. Density distributions have assumed an even distribution of approximately 4.38 animals/km^2 (all species) for the approach of impact analyses for estimation of take. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 90-m (295-ft) ZOI (23-psi TTS ZOI) in approximately 5.5 min or the same time as with the 216-m ZOI (used for the 105-mm FU). The difference is the amount of time it takes the animal to exit the ZOI, or, in other words, how long the animal resides within the ZOI on a straight line path. With live fire events of the 105-mm round occurring at a rate of approximately 2 rounds per min, nearly one half (or 10 rounds) of the total 105-mm rounds (20 rounds) would potentially be expended within this 5.5-min time frame. If the concept of marine mammal avoidance of an area once firing commences is not considered, an average swim speed (1.5 m/s) of animals would allow sufficient time for new animals to re-enter the 23-psi TTS impact area. Allowing for a potential 2-min break in firing after 10 rounds are expended, it is conservative and reasonable to assume that nearly 3 to 4 individual animals may be potentially exposed to the 23–23-psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that, although single animals may be ensonified more than once due to the time required to exit the 23-psi TTS ZOI, individual animals are not considered to be ''taken'' more than once for the purposes of estimating take levels.

Based on this discussion, Table 10 in this **Federal Register** document provides Eglin AFB's estimates of the annual number of marine mammals, by species, potentially taken by Level B harassment, by the gunnery mission noise. It should be noted that these estimates are derived without consideration of the effectiveness of Eglin AFB's proposed mitigation measures (except use of the TR), which are discussed earlier in this document. As indicated in Table 10, Eglin AFB and NMFS estimate that up to 271 marine mammals may incur Level B (TTS) harassment annually. Because these gunnery exercises result in multiple detonations, they have the potential to also result in a temporary modification in behavior by marine mammals at levels below TTS. Based on NMFS' estimates, up to 25 marine mammals may experience a behavioral response to

these exercises during the time frame of an IHA (*see* Table 10). Finally, while one would generally expect the threshold for behavioral modification to be lower than that causing TTS, due to a lack of empirical information and data, a dual criteria for Level B behavioral harassment cannot be developed. However, to ensure that takings are covered by this IHA, NMFS estimates that approximately 1,000 marine mammals of 16 stocks may incur Level B (harassment) takes during the 1-year period of an IHA. NMFS has preliminarily determined that this number will be significantly lower due to the expected high effectiveness of the mitigation measures proposed for inclusion in the IHA (if issued).

Negligible Impact and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, and intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

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Table 10. Yearly Estimated Number of Marine Mammals Affected by the Gunnery Mission Noise

Species	Adjusted Density (#/km^2)	Level A Harassment Injurious 205 dB* EFD For Ear Rupture	Level B Harassment Non-Injurious 182 dB* EFD For TTS	Level B Harassment Non-Injurious 23 psi For TTS	Level B Harassment Non-Injurious 176 dB* EFD For Behavior
Bryde's whale	0.007	<0.001	0.010	0.4	0.041
Sperm whale	0.011	<0.001	0.016	0.0	0.064
Dwarf/pygmy sperm whale	0.024	<0.001	0.035	1.5	0.139
Cuvier's beaked whale	0.10	<0.001	0.015	0.6	0.058
Mesoplodon spp.	0.019	<0.001	0.028	1.2	0.110
Pygmy killer whale	0.030	<0.001	0.044	1.9	0.174
False killer whale	0.026	<0.001	0.038	1.6	0.151
Short-finned pilot whale	0.027	<0.001	0.039	1.7	0.157
Rough-toothed dolphin	0.028	<0.001	0.041	1.7	0.163
Bottlenose dolphin	0.810	0.006	1.177	50.1	4.706
Risso's dolphin	0.113	0.001	0.164	7.0	0.657
Atlantic spotted dolphin	0.677	0.005	0.984	41.9	3.934
Pantropical spotted dolphin	1.077	0.008	1.565	66.7	6.258
Striped dolphin	0.237	0.002	0.344	14.7	1.377
Spinner dolphin	0.915	0.007	1.330	56.6	5.316
Clymene dolphin	0.253	0.002	0.368	15.7	1.470
Unidentified dolphin**	0.053	<0.001	0.077	3.3	0.308
Unidentified whale	0.008	<0.001	0.012	0.5	0.046
All marine mammals	4.325	0.032	6.29	271.1	25.13

km^2 = square kilometers; NA = not applicable
*dB = dB re 1 μPa^2-s
**Bottlenose dolphin/Atlantic spotted dolphin

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No injuries or mortalities are anticipated to occur as a result of Eglin AFB's A–S gunnery mission activities, and none are proposed to be authorized by NMFS. Takes will be limited to Level B harassment in the form of behavioral disturbance and TTS. Although activities would be permitted to occur year-round and can last for approximately 5 to 6 hours at a time, the actual live-fire portion of the exercise usually only lasts for 90 to 120 min. It is possible that some individuals may be taken more than once if those individuals are located in the exercise area on two different days when exercises are occurring. However, multiple exposures are not anticipated to have effects beyond Level B harassment.

Of the 16 marine mammal species or stocks that may be impacted by Eglin AFB's A–S gunnery mission activities, only the sperm whale is listed as endangered under the ESA and as depleted under the MMPA. While animals may be impacted in the immediate vicinity of the activity, because of the small ZOIs (compared to the vast size of the GOM ecosystem where these species live) and the small

amounts of explosives used in the A–S gunnery exercises, NMFS has preliminarily determined that there will not be a substantial impact on marine mammals or on the normal functioning of the nearshore or offshore GOM ecosystems. The proposed activity is not expected to impact rates of recruitment or survival of marine mammals since no mortality (which would remove individuals from the population) or injury are anticipated to occur. Although the proposed activity is anticipated to result in Level B harassment of marine mammals (both by behavioral disturbance and TTS), the level of harassment is not anticipated to impact rates of recruitment or survival of marine mammals.

Additionally, the mitigation and monitoring measures proposed to be implemented (described earlier in this document) are expected to minimize even further the potential for injury or mortality. The protected species surveys will require Eglin AFB to search the area for marine mammals, and if any are found in the live fire area, then the exercise must be suspended until the animal(s) has left the area or relocated. Moreover, the aircrews of the A–S gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (less than or equal to 12 nm (22 km)). This would potentially restrict most gunnery activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (*e.g.,* endangered sperm whales) typically reside.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that Eglin AFB's A–S gunnery mission exercises will result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the A–S gunnery mission exercises will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

A Biological Opinion issued by NMFS on October 20, 2004, concluded that the A–S gunnery exercises in the EGTTR are unlikely to jeopardize the continued existence of species listed under the ESA that are within the jurisdiction of NMFS or destroy or adversely modify critical habitat. NMFS has preliminarily determined that this action, including the modifications to the mitigation and monitoring measures in the 2008 IHA and proposed for inclusion in the 2009 IHA (if issued), does not have effects beyond that which was analyzed in that previous consultation, it is within the scope of that action, and reinitiation of consultation is not necessary. However, prior to issuance of this IHA, NMFS will make a final determination whether additional consultation is necessary.

National Environmental Policy Act (NEPA)

The USAF prepared a Final PEA in November 2002 for the EGTTR activity. NMFS made the USAF's 2002 Final PEA available upon request on January 23, 2006 (71 FR 3474). In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in the USAF's 2002 Final PEA, and, on May 1, 2006, determined that the document accurately and completely described the proposed action, the alternatives to the proposed action, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted the USAF's 2002 Final PEA under 40 CFR 1506.3 and made its own FONSI on May 16, 2006. The NMFS FONSI also took into consideration updated data and information contained in NMFS' **Federal Register** document noting issuance of an IHA to Eglin AFB for this activity (71 FR 27695, May 12, 2006), and previous notices (71 FR 3474 (January 23, 2006); 70 FR 48675 (August 19, 2005)).

As the issuance of the 2008 IHA to Eglin AFB amended three of the mitigation measures for reasons of practicality and safety, NMFS reviewed the USAF's 2002 Final PEA and determined that a new EA was warranted to address: (1) The proposed modifications to the mitigation and monitoring measures; (2) the use of 23 psi as a change in the criterion for estimating potential impacts on marine mammals from explosives; and (3) a cumulative effects analysis of potential environmental impacts from all GOM activities (including Eglin mission activities), which was not addressed in the USAF's 2002 Final PEA. Therefore, NMFS prepared a new EA in December 2008 and issued a FONSI for its action on December 9, 2008. Based on those findings, NMFS determined that it was not necessary to complete an environmental impact statement for the issuance of an IHA to Eglin AFB for this activity. NMFS has preliminarily determined that this proposed activity is within the scope of NMFS' 2008 EA and FONSI.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of several species of marine mammals incidental to the USAF, Eglin AFB, for their A–S gunnery mission activities in the GOM provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 8, 2009.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–24842 Filed 10–16–09; 8:45 am]

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DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. This information collection request pertains to the Human Reliability Program (HRP). This information collection request consists of forms that will certify to DOE that respondents were advised of the requirements for occupying or

continuing to occupy a HRP position. The HRP is a security and safety reliability program for individuals who apply for or occupy certain positions that are critical to the national security. It requires an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review of all applicants or incumbents. It is also used to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical conditions that could result in an accidental or unauthorized detonation of nuclear explosives.

DATES: Comments regarding this proposed information collection must be received on or before December 18, 2009. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Dane A. Woodard, U.S. Department of Energy, Office of Health, Safety and Security (HS–1.4), 1000 Independence Ave., SW., Washington, DC 20585, telephone at (202) 586–4148, by fax at (202) 586–3312, or by e-mail at *dane.woodard@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dane A. Woodard, U.S. Department of Energy, Office of Health, Safety and Security, HS–1.4, 1000 Independence Ave., SW., Washington, DC 20585, telephone at (202) 586–4148, by fax at (202) 586–3312, or by e-mail at *dane.woodard@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* 1910–5122; (2) *Information Collection Request Title:* Human Reliability Program; (3) *Type of Review:* renewal; (4) *Purpose:* This collection provides for DOE management to ensure that individuals who occupy HRP positions meet program standards of reliability and physical and mental suitability; (5) *Respondents:* 51,700; (6) *Estimated Number of Burden Hours:* 31,020.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91, of August 4, 1977, and 10 CFR part 712 *et seq.*

Issued in Washington, DC on October 8, 2009.

Lesley A. Gasperow,

Director, Office of Resource Management, Office of Health, Safety and Security.

[FR Doc. E9–24920 Filed 10–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 18, 2009, 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, NV 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation: Rural Perceptions of Environmental Activities at the Nevada Test Site
2. Sub-Committee Reports
   A. Industrial Sites Committee
   B. Membership Committee
   C. Outreach Committee
   D. Soils Committee
   E. Transportation/Waste Committee
   F. Underground Test Area Committee

Public Participation: The EM SSAB, Nevada Test Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm*.

Issued at Washington, DC on October 13, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–25117 Filed 10–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 5, 2009, 6 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda.
- Approval of October Meeting Minutes.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Administrative Issues:
  - Committee Updates.
- Public Comments.
- Final Comments.
- Adjourn.

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Kozlowski at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Kozlowski at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html*.

Issued at Washington, DC, on October 14, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–25118 Filed 10–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13424–000; Project No. 13437–000]

Lock+™ Hydro Friends Fund II, LLC; FFP Iowa 2, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 9, 2009.

Lock+™ Hydro Friends Fund II, LLC and FFP Iowa 2, LLC filed applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers Lock & Dam No. 13 located on the Mississippi River in Clinton County, Iowa, and Fulton County, Illinois.

The proposed projects would be integral with: (1) The existing U.S. Army Corps of Engineers Lock & Dam No. 13 comprised of an 1,066-foot-long gated dam section with 3 roller gates and 10 Taintor gates, and a 600 foot-long lock, and; (2) an existing 33-mile-long reservoir extending from River Mile 522 to River Mile 556 at a normal pool elevation of 583.0 feet mean sea level.

The Lock+TM Hydro Friends Fund II, LLC's proposed project would consist of: (1) Eight generating units installed in a new door to be installed in the auxiliary lock with a total capacity of 4,963 kilowatts; and (2) a new 500-foot-long, 4.16-kilovolt transmission line connected to an existing above ground local distribution system. The project would have an estimated average annual generation of 41.3 gigawatt-hours.

Applicant Contact: Mr. Wayne F. Krouse, Hydro Friends Fund IL LLC, 5090 Richmond Avenue, #390, Houston, TX 77056, phone (877) 556–6566 x709.

The FFP Iowa 2, LLC's proposed project would consist of: (1) 18 Very Low Head (VHL) generating units and 80 hydrokinetic generating units totaling 20.2 megawatts (MW) installed capacity; (2) a new 6,500-foot-long 69-kilovolt transmission line connected to an existing above ground local distribution system; and (3) appurtenant facilities. The project would have an estimated average annual generation of 99.5 gigawatt-hours. This project would be located on the gated portion of the dam and below the dam, not at the auxiliary lock.

Applicant Contact: Mr. Daniel R. Irvin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone (978) 252–7631.

FERC Contact: Michael Spencer, (202) 502–6093.

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 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–13392) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25017 Filed 10–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2985–007]

The Mead Corporation, MW Custom Papers, LLC, Onyx Specialty Papers, Inc.; Notice of Application for Transfer of License and Soliciting Comments and Motions To Intervene

October 13, 2009.

On October 9, 2009, The Mead Corporation and MW Custom Papers, LLC (transferors) and Onyx Specialty Papers, Inc. (transferee), filed an application for transfers of license of the Willow Mill Project, located on the Housatonic River in Berkshire County, Massachusetts.

Applicants seek Commission approval to transfer the license for the Willow Mill Project from the transferors to the transferee.

Applicant Contact: Transferors: Mr. John Clements, Van Ness Feldman, 1050 Thomas Jefferson Street, NW., Washington, DC 20007, Phone (202) 298–1933. *Transferee:* Mr. Gary L. Fialty, Bacon Wilson, P.C., 33 State Street, Springfield, MA 01103, Phone (413) 739–7740.

FERC Contact: Henry Woo, (202) 502–8872.

Deadline for filing comments and motions to intervene: October 29, 2009. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii)(2008) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-*

comments.asp. More information about this project can be viewed or printed on the eLibrary link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–2985–007) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25095 Filed 10–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12642–003]

Wilkesboro Hydroelectric Company, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

October 13, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12642–003.

c. *Date filed:* September 29, 2009.

d. *Applicant:* Wilkesboro Hydroelectric Company, LLC.

e. *Name of Project:* W. Kerr Scott Hydropower Project.

f. *Location:* The proposed project would be located at the existing Army Corps of Engineer's (Corps) W. Kerr Scott Dam on the Yadkin River, near Wilkesboro in Wilkes County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Dean Edwards, P.O. Box 1565, Dover, FL 33527, (813) 659–3014, (813) 966–4300 Mr. Kevin Edwards, P.O. Box 143, Mayodan, NC 27027, (336) 589–6138, *ph@piedmonthydropower.com*.

i. *FERC Contact:* Brandi Sangunett at (202) 502–8393, or via e-mail at *brandi.sangunett@ferc.gov*.

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* November 30, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

m. The application is not ready for environmental analysis at this time.

n. The proposed 4.0-megawatt (MW) W. Kerr Scott Project would utilize the existing Corps' W. Kerr Scott Dam and operate consistent with the Corp's operation plan, typically to maintain the normal surface elevation of W. Kerr Scott Reservoir at 1,030 feet mean sea level (msl). The proposed project consists of: (1) Two 8-foot-long penstocks; (2) an 80-foot-long by 30-foot-wide by 20-foot-high powerhouse, containing two vertical shaft turbines; (3) a 749-foot-long 12.25-inch-diameter discharge conduit; (4) a 3,600-foot-long, 12.4-kV transmission line; (5) substation; and (6) appurtenant facilities. The project would generate about 22.4 gigawatt hours (GWH) annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the North Carolina State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter	December 2009.
Issue Acceptance Letter	April 2010.
Issue Scoping Document 1 for comments.	May 2010.
Request Additional Information.	July 2010.
Issue Scoping Document 2	August 2010.
Notice of application is ready for environmental analysis.	August 2010.
Notice of the availability of the EA.	January 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25097 Filed 10–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1005–011]

Applications; City of Boulder, CO

October 9, 2009.

Notice of Application Accepted for Filing, Soliciting Comments, Protests, and Motions To Intervene, Ready for Environmental Analysis, and Soliciting Recommentations and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conversion of License to Conduit Exemption.

b. *Project No.:* 1005–011.

c. *Date filed:* March 10, 2009.

d. *Applicant:* City of Boulder, Colorado.

e. *Name of Project:* Boulder Canyon Hydroelectric Project.

f. *Location:* On the water supply facilities of the City of Boulder, in Boulder and Nederland Counties, Colorado. All of the lands on which the project structures are located are owned by the applicant. No federal lands would be included in the proposed project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Carol D. Ellinghouse, Water Resources Coordinator, City of Boulder, Colorado, Department of Public Works, P.O. Box 791, Boulder, CO 80306–0791, phone (303) 441–3266.

i. *FERC Contact:* Robert Bell, (202) 502–6062, *Robert.Bell@ferc.gov*.

j. *Status of Environmental Analysis:* The application is ready for environmental analysis at this time. The Commission is requesting comments, reply comments, and recommendations for both the request to remove licensed project facilities from the project boundary and concerning Commission jurisdiction. The Commission is also requesting terms and conditions for the Conduit Exemption application.

k. *Deadline for filing responsive documents*—The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533, issued May 8, 1991, 56 Fed. Reg. 23,108, May 20, 1991) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed within 60 days from the issuance date of this notice. All reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project numbers (P–1005–011) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the applicant specified in a particular application.

l. *Description of request:* In the application filed on March 10, 2009, the City of Boulder seeks to convert the currently licensed Boulder Canyon Hydroelectric Project No. 1005 to a conduit exemption. This action results in the removal of certain licensed project facilities from the project boundary and from Commission jurisdiction.

a. *Licensed Facilities:* The applicant proposes to convert its license to a conduit exemption for the Boulder Canyon Hydroelectric Project No. 1005. The applicant proposes to remove the following project facilities from the Commission's jurisdiction: (1) A 175-foot-high, 720-foot-long concrete dam; (2) a reservoir (Baker Reservoir) having a surface area of 200 acres; (3) a 225-foot-long tunnel connecting a 11.7-mile-long pipeline; (4) a Forebay (Kossler Reservoir) formed by three embankment dams; and (5) a steel penstock. The aforementioned facilities would remain operational as part of the applicant's water supply facilities.

b. *Conduit Exemption:* The applicant proposes a conduit exemption for the Boulder Canyon Hydroelectric Project No. 1005. The proposed project would be located on its water supply system in Boulder and Nederland Counties, Colorado, and would consist of: (1) An existing powerhouse containing one generating unit having an installed capacity of 10 megawatts, and (2) appurtenant facilities. The City of Boulder, Colorado, estimates the project would have an average annual generation of 11.6 megawatt-hours that would be sold to a local utility.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

n. *Mailing list:* Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application (see item (j) above).

p. *Filing and Service of Responsive Documents*—All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' or ''TERMS AND CONDITIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments or terms and conditions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. *e-Filing:* Comments, motions to intervene, protests, recommendations, or terms and conditions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25018 Filed 10–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–1–000]

Northern Natural Gas Company; Notice of Application

October 9, 2009.

Take notice that on October 2, 2009, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP10–1–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place thirteen horizontal compressor units consisting of 20,000 horsepower at its Mullinville Compressor Station and associated piping, all located in Kiowa County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Dari R. Dornan, Senior Counsel, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330, or by calling (402) 398–7077 (telephone) or (402) 398–7426 (fax), *dari.dornan@nngco.com*, or to Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330, or by calling (402) 398–7103 (telephone) or (402) 398–7592 (fax), *mike.loeffler@nngco.com*.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25020 Filed 10–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

October 8, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–540–002
Applicants: Northern Border Pipeline Company
Description: Northern Border Pipeline Company submits a Motion to Effectuate Tariff Sheets.
Filed Date: 08/24/2009
Accession Number: 20090824–5124
Comment Date: 5 *p.m.* Eastern Time on Tuesday, October 13, 2009

Docket Numbers: RP09–487–001
Applicants: High Island Offshore System, L.L.C.
Description: Motion of High Island Offshore System, L.L.C. to place tariff sheets into effect.
Filed Date: 09/30/2009
Accession Number: 20090930–0086
Comment Date: 5 *p.m.* Eastern Time on Tuesday, October 13, 2009

Docket Numbers: RP09–882–001
Applicants: Questar Pipeline Company
Description: Questar Pipeline Company submits Substitute First Revised Sheet No 172D *et al.* to its FERC Gas Tariff, First Revised Volume No 1, to be effective 9/1/09.
Filed Date: 10/07/2009
Accession Number: 20091007–0079
Comment Date: 5 *p.m.* Eastern Time on Monday, October 19, 2009

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 *p.m.* Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–25090 Filed 10–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–5–000]

CAlifornians for Renewable Energy, Inc. (CARE); Complainant v. Williams Northwest Pipeline FERC Enforcement Hotline; Respondents; Notice of Complaint

October 13, 2009.

Take notice that on October 8, 2009, pursuant to the Natural Gas Act, 15 U.S.C. 717–717z and section 206 of the Rules and Practice and Procedure, 18 CFR 385.206 (2009), CAlifornians for Renewable Energy, Inc. (CARE) filed a formal complaint against Williams Northwest Pipeline (Williams) and the FERC Enforcement Hotline (Hotline) for Williams' construction of a pig receiver, fence, road, and driveway on CARE member Mary Benafel's property, without accurate and adequate notice, as required by William's blanket certificate, 18 CFR 157.209(d), and without the necessary property rights, as well as the Hotline's mishandling of CARE's informal complaint.

CARE states that copies of the complaint were served on Williams and other interested parties.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 October 28, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25099 Filed 10–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13301–002–WY]

Town of Afton, Notice of Availability of Environmental Assessment

October 9, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47,897), the Office of Energy Projects has reviewed the application for a minor license for the Culinary Water System Hydroelectric Project, and has prepared an Environmental Assessment (EA). The proposed project would be built on the Culinary Water Supply System, in the Town of Afton, Lincoln County, Wyoming. The project would occupy approximately 8 acres of U.S. Forest Service land in the Bridger-Teton National Forest.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Please contact Ryan Hansen by telephone at (202) 502–8074 or by e-mail at *ryan.hansen@ferc.gov* if you have any questions.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25019 Filed 10–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL09–26–000; EL09–26–001]

New York State Electric and Gas Corporation; Notice of Filing of Settlement Agreement and Establishment of Comment Dates

October 13, 2009.

Take notice that on September 21, 2009, pursuant to Rule 602 of the Rules of Practice and Procedure, 18 CFR 385.602, New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk

Power Corporation d/b/a National Grid (National Grid), and the New York Municipal Power Agency (NYMPA) (collectively, settling parties) filed a partial offer of settlement (Settlement Agreement) in Docket Nos. EL09–26–000 and EL09–26–001. The Settlement Agreement seeks to resolve several issues arising out of NYSEG's December 23, 2008 petition for a declaratory order regarding invoices issued by the New York Independent System Operator (NYISO) between 1999 and 2008 to market participants, in certain NYSEG and National Grid metering subzones that were affected by metering errors. The invoices at issue are identified in Appendices 5 and 6 of the Joint Stipulation of Facts Not in Dispute which is attached to the Settlement Agreement. The settling parties assert that they were unable to reach an agreement on whether the Commission should order NYISO to correct the invoices affected by the metering errors during the period in question (reserved issue).

The settling parties have agreed to present the reserved issue to the Commission for determination and have also requested that the Commission allow comments on the Settlement Agreement and permit briefs to be filed on the reserved issue.

Parties may submit comments on the Settlement Agreement within 30 days of the date of the issuance of this Notice and parties may submit reply comments within 40 days of the date of the issuance of this Notice.[1]

Parties may submit initial briefs on the reserved issue within 45 days of the date of the issuance of this Notice and parties may submit reply briefs within 15 days of the submission of initial briefs.

The Commission encourages electronic submission of filings in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Those unable to file electronically should submit an original and 14 copies of all filings 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–25096 Filed 10–16–09; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission's establishment of a comment and briefing period in the above captioned proceedings does not prejudge how the Commission may ultimately rule on the Settlement Agreement pending before us.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8969–6]

Cross-Media Electronic Reporting Rule State Authorized Program Revision/Modification Approvals: State of Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of Minnesota's request to revise/modify programs to allow electronic reporting for certain of their EPA-authorized programs under title 40 of the CFR.

DATES: EPA's approval is effective on October 19, 2009.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov*, or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR, requires that State, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the State, tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the State, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the State, tribe or local government has sufficient legal authority to implement the electronic reporting components of its authorized programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On December 23, 2008, the State of Minnesota Pollution Control Agency (MPCA) submitted an application for its CROMERR Online Services (MPCA–CROMERR) electronic document receiving system for revision or modification of multiple EPA-authorized programs under title 40 CFR. EPA reviewed MPCA's request to revise/modify their EPA-authorized programs and, based on this review, determined the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Minnesota's request for revision/modification to certain of their authorized programs is being published in the **Federal Register**.

Specifically, EPA has approved MPCA's request for revisions/modifications to the following of their authorized programs to allow electronic reporting under 40 CFR parts 51, 60–61, 70–71, 122–123, 262, 264–265, and 403:

- Part 52—Approval and Promulgation of Implementation Plans;
- Part 60—Standards of Performance for New Stationary Sources;
- Part 61—National Emission Standard for Hazardous Air Pollutants;
- Part 70—State Operating Permit Programs;
- Part 123—State Program Requirements;
- Part 271—Requirements for Authorization of State Hazardous Waste Programs; and
- Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution.

MPCA was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: October 8, 2009.

Lisa Schlosser,

Director, Office of Information Collection.

[FR Doc. E9–25124 Filed 10–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8970–1, EPA–HQ–OW–2008–0238]

Modification to 2008 National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 today are proposing for public comment a modification to the 2008 National Pollutant Discharge Elimination System (NPDES) general permits for stormwater discharges associated with construction activity in order to extend by one-year the expiration date of the permit. Hereinafter, these NPDES general permits will be referred to as ''permit'' or ''2008 construction general permit'' or ''2008 CGP.'' The 2008 CGP was originally issued for a period not to exceed two (2) years. Today, EPA proposes to modify the CGP in order to extend the 2 year term of the 2008 CGP by one year so that it expires on June 30, 2011, instead of June 30, 2010. If EPA finalizes this action, the 2008 CGP will be in effect for a period of three (3) years. By Federal law, no NPDES permit may be issued for a period that exceeds five (5) years.

DATES: Comments on EPA's proposal, including the draft permit, must be postmarked by November 18, 2009. If finalized as proposed, EPA would be extending the expiration date of the 2008 CGP until midnight June 30, 2011.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. To send comments directly to the docket for this notice, go to the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* and enter Docket ID No. EPA–HQ–OW–2008–0238 in the Search Box under ''Comment or Submission.'' Comments may be sent by electronic mail (e-mail) to *ow-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2008–0238. To send comments by mail in hard copy or via a Disk or CD/ROM, use the following address: Water Docket, Environmental Protection Agency, mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2008–0238. To send comments by hand delivery or courier, deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OW–2008–0238. Further instructions for submitting comments are provided in Section I.C.

FOR FURTHER INFORMATION CONTACT: Greg Schaner, Water Permits Division, Office of Wastewater Management (Mail Code: 4203M), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., EPA East, Washington, DC 20460; telephone number: (202) 564–0721; fax number: (202) 564–6431; e-mail address: *schaner.greg@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

If a discharger chooses to apply to for coverage under the 2008 CGP, the permit provides specific requirements for preventing contamination of stormwater discharges from the following construction activities:

Category	Examples of affected entities	North American Industry Classification System (NAICS) Code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Building, Developing and General Contracting	233
	Heavy Construction	234

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition of ''construction activity'' and ''small construction activity'' in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Eligibility for coverage under the 2008 CGP is limited to operators of ''new projects'' or ''unpermitted ongoing projects.'' A ''new project'' is one that commences after the effective date of the 2008 CGP. An ''unpermitted ongoing project'' is one that commenced prior to the effective date of the 2008 CGP, yet never received authorization to discharge under the 2003 CGP or any other NPDES permit covering its construction-related stormwater discharges. This permit is effective only in those areas where EPA is the permitting authority. A list of eligible areas is included in Appendix B of the 2008 CGP.

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

1. Docket. EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2008–0238. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *www.regulations.gov* and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone

number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. Electronic versions of the final permit and fact sheet are available at EPA's stormwater Web site *http://www.epa.gov/npdes/stormwater*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov/fdmspublic/component/main* view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'', then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1.

Submitting CBI. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark all of the information that you claim to be CBI. For CBI information on computer disks mailed to EPA, mark the surface of the disk as CBI. Also identify electronically the specific information contained in the disk or that you claim is CBI. In addition to one complete version of the specific information claimed as CBI, you must submit a copy that does not contain the information claimed as CBI for inclusion in the public document. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or section in the fact sheet or permit to which each comment refers. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically*. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM*. These electronic submissions will be accepted in Microsoft Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send the original and three copies of your comments.

3. *By Hand Delivery or Courier*. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.B.

D. Public Hearings

EPA has not scheduled any public hearings to receive public comment concerning the proposed permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral

statements and data pertaining to the proposed permit at the public hearing.

E. Finalizing This Action

This action will not be finalized until after all significant public comments have been considered and addressed. EPA's response to public comments received will be included in the docket as part of the final action. Once the final permit becomes effective, operators of new and unpermitted ongoing construction projects may seek authorization under the new 2008 CGP prior to the midnight June 30, 2011 expiration date.

C. Who Are the EPA Regional Contacts for This Permit?

For EPA Region 1, contact Jessica Hing at tel.: (617) 918–1560 or e-mail at *hing.jessica@epa.gov*.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637–3856 or e-mail at *venezia.stephen@epa.gov*, or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977–5838 or e-mail at *bosques.sergio@epa.gov*.

For EPA Region 3, contact Garrison Miller at tel.: (215) 814–5745 or e-mail at *miller.garrison@epa.gov*.

For EPA Region 5, contact Brian Bell at tel.: (312) 886–0981 or e-mail at *bell.brianc@epa.gov*.

For EPA Region 6, contact Brent Larsen at tel.: (214) 665–7523 or e-mail at: *larsen.brent@epa.gov*.

For EPA Region 7, contact Mark Matthews at tel.: (913) 551–7635 or e-mail at: *matthews.mark@epa.gov*.

For EPA Region 8, contact Greg Davis at tel.: (303) 312–6314 or e-mail at: *davis.gregory@epa.gov*.

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972–3510 or e-mail at *bromley.eugene@epa.gov*.

For EPA Region 10, contact Dick Hetherington at tel.: (206) 553–1941 or e-mail at *hetherington.dick@epa.gov*.

II. Background of Permit

A. Statutory and Regulatory History

The Clean Water Act (''CWA'') establishes a comprehensive program ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). The CWA also includes the objective of attaining ''water quality which provides for the protection and propagation of fish, shellfish and wildlife.'' 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control discharges through the issuance of National Pollutant Discharge Elimination System (''NPDES'') permits, which may be issued for fixed terms that may not exceed five (5) years. 33 U.S.C. 1342(b)(1)(B).

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. EPA published a final regulation in the **Federal Register** on the first phase of this program on November 16, 1990, establishing permit application requirements for ''storm water discharges associated with industrial activity.'' *See* 55 FR 47990. EPA defined the term ''storm water discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of ''industrial activity'' pursuant to 40 CFR 122.26(b)(14)(x). Phase II of the stormwater program was published in the **Federal Register** on December 8, 1999, and required NPDES permits for discharges from construction sites disturbing at least one acre, but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). *See* 64 FR 68722. EPA is proposing to extend the expiration date of the 2008 CGP under the statutory and regulatory authority cited above.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306. Once an effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, NPDES permits are required to incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national effluent limitations and standards, permitting authorities incorporate technology-based effluent limitations on a best professional judgment basis. CWA section 402(a)(1)(B); 40 CFR 125.3(a)(2)(ii)(B).

B. Summary of 2008 CGP

EPA announced the issuance of the 2008 CGP on July 14, 2008. See 73 FR 40338. Construction operators choosing to be covered by the 2008 CGP must certify in their notice of intent (NOI) that they meet the requisite eligibility requirements, described in Part 1.3 of the permit. If eligible, operators are authorized to discharge under this permit in accordance with Part 2. Permittees must install and implement control measures to meet the effluent limits applicable to all dischargers in Part 3, and must inspect such stormwater controls and repair or modify them in accordance with Part 4. The permit in Part 5 requires all construction operators to prepare a stormwater pollution prevention plan (SWPPP) that identifies all sources of pollution, and describes control measures used to minimize pollutants discharged from the construction site. Part 6 details the requirements for terminating coverage under the permit.

The 2008 CGP permit provides coverage for discharges from construction sites that occur in areas not covered by an approved State NPDES program. EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 issued the 2008 CGP to replace the expired 2003 CGP for operators of new and unpermitted ongoing construction projects. The geographic coverage and scope of the 2008 CGP is listed in Appendix B of the permit.

C. What Is EPA's Rationale for the Modification of the 2008 CGP for a One-Year Extension of the Expiration Date?

As stated, EPA proposes to modify the 2008 CGP by extending, by one year, the expiration date of the 2008 CGP. This proposed action is necessary due to EPA's schedule for finalizing effluent limitations guidelines (ELG) and new source performance standards (NSPS) (hereinafter, ELG) for the construction and development (C&D) point source category, and the anticipated timeframes associated with issuing a new CGP that incorporates the substantive requirements of the C&D ELG. The permit modification for the proposed one-year extension of the 2008 CGP is based on actions and initiatives the Agency is undertaking or planning to undertake and the resulting resource demands they are placing on EPA's NPDES stormwater program. The cumulative impact of these new initiatives will limit the Agency's ability to meet a current seven-month timeframe to incorporate the requirements of the C&D ELG into a new CGP before midnight June 30, 2010.

EPA is required by court order to publish and promulgate proposed ELGs and NSPSs for the C&D point source category by December 1, 2008 and publish and promulgate final ELGs for the C&D point source category by December 1, 2009. See *NRDC, et al.* v. *U.S. EPA*, No CV–0408307 (C.D. Cal.) (Permanent Injunction and Judgment, December 5, 2006). Any NPDES permit

issued after the effective date of the C&D ELG, whether issued by EPA or an authorized state, must incorporate the substantive technology-based requirements of the ELG into the permit. The expiration of the 2008 CGP on midnight June 30, 2010, currently gives EPA approximately seven months to propose and finalize a new CGP, which incorporates the C&D ELG requirements, before midnight June 30, 2010. For a number of reasons, EPA needs more time to incorporate the C&D ELG into a new CGP and to finalize the permit by midnight June 30, 2010.

The current seven-month timeframe to propose and finalize a new permit is impracticable based on EPA's past experience in issuing stormwater general permits, in general, and with the construction general permit specifically. In the past, EPA required an estimated eighteen months to propose and finalize the 2003 CGP, and a similar amount of time for the previous construction general permits. While EPA does not believe the 2008 Multi-Sector General Permit (MSGP) for stormwater discharges associated with industrial activities is typical, that permit required almost three years to finalize. Beyond incorporating updated modifications to the permit based on changes to the technology-based and water quality-based effluent limitations into the permit, EPA is required to conduct many additional tasks that are automatically required of final Federal actions, such as conducting consultations under the Endangered Species Act and National Historic Properties Act, obtaining CWA section 401 certifications for the permit from States and Indian Country lands, providing the public with an opportunity to comment, and responding to all comments received during the public comment period. Separately, these tasks have historically required more than seven months. The combined effect of these tasks that are each necessary to issue a general permit on EPA's schedule for permit issuance is to make a seven-month permit issuance timeframe impracticable.

EPA is undertaking or planning to undertake actions that are putting new demands on the Agency's resources in the NPDES stormwater program. These new required actions and initiatives will compete for the Agency's resources needed to issue a new CGP. The Agency did not expect these additional required actions or initiatives when the 2008 CGP was issued in July 2008. For instance, in October 2008, the National Research Council (NRC) of the National Academy of Sciences released its report on EPA's national stormwater program (*Urban Stormwater Management in the United States*, October 2008) (available at *http://www.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf*), which recommended a number of fundamental changes to the way in which EPA's stormwater program under the CWA is effectuated. The NRC report states that stormwater discharges from the built environment remains one of the greatest challenges of modern water pollution control, ''as this source of contamination is a principal contributor to water quality impairment of waterbodies nationwide.'' The NRC found that the current regulatory approach by EPA under the CWA is not adequately controlling all sources of stormwater discharge that are contributing to waterbody impairment. NRC recommended that EPA address stormwater discharges from impervious land cover and promote practices that harvest, infiltrate, and evapotranspirate stormwater to prevent it from being discharged, which is critical to reducing the volume and pollutant loading to our Nation's waters. Since the release of the NRC report, EPA has devoted significant resources to the consideration of the report's recommendations and to a determination of the best ways to strengthen controls on stormwater discharges nationwide. EPA anticipates expending significant resources in both the short and long term in addressing the NRC's recommendations. The resource demands on the Agency that are necessary to respond to the report's recommendations were not present when EPA issued the final 2008 CGP, and were not fully factored into the anticipated timeline for issuing a CGP that incorporates the C&D ELG by midnight June 30, 2010.

In addition, on May 12, 2009, President Obama signed Executive Order (E.O.) 13508, Chesapeake Bay Protection and Restoration (available at, *http://executiveorder.chesapeakebay.net/default.aspx*). The President's E.O., under section 202(a), directed EPA to define the next generation of tools and actions to restore water quality in the Chesapeake Bay and describe the changes to be made to regulations, programs, and policies to implement these actions. EPA issued a draft 202(a) Report on September 9, 2009. EPA will finalize the section 202(a) Report in November 2009 and issue a final strategy for protecting and restoring the Chesapeake Bay on May 12, 2010. The completion of these tasks and any resulting regulatory or programmatic actions that are necessary to carry out the E.O. are a high priority for the federal government, and will consume resources that will not be available to issue a new CGP by midnight June 30, 2010.

For the reasons discussed above, EPA proposes to modify the 2008 CGP in order to extend the current midnight June 30, 2010 expiration date by one year to midnight June 30, 2011. This will give EPA approximately the same time period, eighteen months, which the Agency required to issue the 2003 CGP. EPA requests comments on this proposed modification of the 2008 CGP to extend the expiration date to midnight June 30, 2011.

EPA believes it is imperative that EPA has sufficient time to incorporate the C&D ELG into the CGP and issue a new CGP prior to the existing permit's expiration date. If EPA does not issue a new CGP before expiration of the existing permit, no new construction projects may be permitted under the CGP, leaving individual NPDES permits as the only available option for permitting new projects. The sole reliance on individual permits will mean that discharge authorizations will be delayed due to the greater amount of time and Agency resources that are required for developing and issuing individual permits. In turn, construction projects that need to begin construction activity on or after midnight June 30, 2010 will be delayed for an uncertain amount of time until EPA can review their individual permit application and issue the necessary permits. Rather than risk detrimental delays to new construction projects, with no clear benefit to our nation's surface waters, EPA has decided that it is advisable to instead modify the 2008 CGP to extend the expiration date by 1 year to midnight June 30, 2011.

D. EPA's Authority To Modify NPDES Permits

EPA regulations establish when the permitting authority may make modifications to existing NPDES permits. In relevant part, EPA regulations state that ''[w]hen the Director receives any information * * * he or she may determine whether or not one or more of the causes listed in paragraph (a) * * * of this section for modification * * * exist. If cause exists, the Director may modify * * * the permit accordingly, subject to the limitations of 40 CFR 124.5(c).'' 40 CFR 122.62. For purposes of this **Federal Register** notice, the relevant cause for modification is at 40 CFR 122.62(a)(2), which states a permit may be modified when ''[t]he Director has received new information'' and that information was not available at the time of permit

issuance * * * and would have justified the application of different permit conditions at the time of issuance.'' Pursuant to EPA regulations, ''[w]hen a permit is modified, only the conditions subject to the modification are reopened.'' 40 CFR 122.62.

In the case of the 2008 CGP, a permit modification is justified based on the new information EPA has received since issuance of the 2008 CGP in July 2008, described above in Section II.C, EPA is undertaking or planning to undertake actions that are putting new demands on the Agency's resources in the NPDES stormwater program. The contents and the resulting resource demands of the NRC Report and the Chesapeake Bay E.O. were not available at the time of issuance of the 2008 CGP. Meeting these new demands while implementing new effluent guidelines and new source performance standards is not practical in a seven-month time period. If this information was available at the time of permit issuance, it would have justified EPA establishing an expiration date for the 2008 CGP later than midnight June 30, 2010. As a result, cause exists under EPA regulations to justify modification of the 2008 CGP to extend the expiration date of the permit from midnight June 30, 2010 to midnight June 30, 2011.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: October 9, 2009.

Ira Leighton,

Acting Regional Administrator, EPA Region 1.

Dated: October 9, 2009.

Jose C. Font,

Acting Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: October 8, 2009.

Kevin Bricke,

Acting Division Director, Division of Environmental Planning & Protection, EPA Region 2.

Dated: October 9, 2009.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: October 9, 2009.

Tinka G. Hyde,

Director, Water Division, EPA Region 5.

Dated: October 9, 2009.

Bill Luthans,

Acting Director, Water Quality Protection Division, EPA Region 6.

Dated: October 8, 2009.

Karen A. Flournoy,

Acting Director, Wetlands and Pesticides Division, EPA Region 7.

Dated: October 8, 2009.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships & Regulatory Assistance, EPA Region 8.

Dated: October 9, 2009.

Alexis Strauss,

Director, Water Division, EPA Region 9.

Dated: October 9, 2009.

Christine Psyk,

Acting Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. E9–25123 Filed 10–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0699; FRL–8969–1]

Review of the National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of draft document for public review and comment.

SUMMARY: On or about October 1, 2009, the National Center for Environmental Assessment (NCEA) and the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public review and comment a draft document titled Integrated Review Plan for the Ozone National Ambient Air Quality Standards Review—External Review Draft.

This document contains the plans for the new periodic review of the air quality criteria for ozone (O3)-related effects on public health and public welfare and the current O3 standards or any revised standards that may result from the reconsideration of the 2008 O3 standards. This draft Integrated Review Plan (IRP) is being released for the purpose of consulting with the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board [1] and obtaining public comment on the Agency's plans. The final IRP will be informed by comments received from the CASAC and the public. The draft IRP will be posted on the Agency's Technology Transfer Network (TTN) Web site at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.* The draft IRP may be accessed in the ''Documents from Current Review'' section under ''Planning Documents.''

[1] For purposes of this review, the 7-member CASAC has been supplemented by additional scientific experts collectively referred to as the CASAC O3 NAAQS Review Panel.

DATES: Comments should be submitted on or before November 6, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0699, 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:* 202–566–9744.
- ☐ *Mail:* EPA–HQ–OAR–2008–0699, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

Hand Delivery: Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0699. The 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 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 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 materials, 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 Air and Radiation Docket and Information Center, 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 and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Any questions concerning the draft IRP should be directed to Dr. David McKee at *mckee.dave@epa.gov;* telephone 919–541–5288.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

☐ Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

☐ Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

☐ Describe any assumptions and provide any technical information and/or data that you used.

☐ If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

☐ Provide specific examples to illustrate your concerns, and suggest alternatives.

☐ Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes National Ambient Air Quality Standards (NAAQS) for each listed pollutant, with the NAAQS based on the air quality criteria, Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge about the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Air quality criteria have been established for O3, and primary and secondary O3 NAAQS have been set to provide protection against adverse health and welfare effects, respectively. EPA is currently reviewing the air quality criteria and NAAQS for O3, and the overall plan and schedule for this review is presented in the Integrated Review Plan for the Ozone National Ambient Air Quality Standards—External Review Draft.[2] This draft of the integrated review plan is available for public review and comment until November 6, 2009, and will be the subject of a consultation with the CASAC on November 13, 2009. Comments received from that consultation with CASAC and from the public will be considered in finalizing the plan and in beginning the review of the air quality criteria.

[2] EPA 452/D–09–001; September 2009; *Available: http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html*

Dated: October 7, 2009.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E9–24815 Filed 10–16–09; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standard 35, Estimating the Historical Cost of General Property, Plant, and Equipment—Amending Statements of Federal Financial Accounting Standards 6 and 23

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standard 35, Estimating the Historical Cost of General Property, Plant, and Equipment—Amending Statements of Federal Financial Accounting Standards 6 and 23.

The standard is available on the FASAB home page *http://www.fasab.gov/standards.html*. Copies

can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Public Law 92–463.

Dated: October 14, 2009.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. E9–25104 Filed 10–16–09; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, October 20, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Darlene Harris,

Deputy Secretary of the Commission.

[FR Doc. E9–25050 Filed 10–16–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 3, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. The Bonita M. Hegemann Irrevocable Trust, Newman Grove, Nebraska, and Bonita M. Hegemann, Lindsay, Nebraska, and James B. Hegemann, Newman Grove, Nebraska, as trustees; to acquire voting shares of Lindsay State Company, and thereby indirectly acquire voting shares of Bank of Lindsay, both of Lindsay, Nebraska.

Board of Governors of the Federal Reserve System, October 14, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–25045 Filed 10–16–09; 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 November 13, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. BancFirst Corporation, Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of First Jones Bancorporation, Inc., and thereby indirectly acquire voting shares of First State Bank, both of Jones, Oklahoma.

Board of Governors of the Federal Reserve System, October 14, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–25044 Filed 10–16–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC seeks public comments on its proposal to extend through January 31, 2013 the current OMB clearance for information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule (''MTOR'' or ''Rule''). That clearance expires on January 31, 2010.

DATES: Comments must be filed by December 18, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/MTORpra*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the SUPPLEMENTARY INFORMATION section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Jock Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-2984.

SUPPLEMENTARY INFORMATION:

Request for Comments:

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Mail or Telephone Order Merchandise Trade Regulation Rule: FTC File No. R511929,'' to facilitate the organization of comments. Please note that your comment including your name and your state will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: (*https://public.commentworks.com/ftc/MTORpra*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/ftc/MTORpra*). If this Notice appears at (*www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (*http://www.ftc.gov*) to read the Notice and the news release describing it.

A comment filed in paper form should include the reference ''Mail or Telephone Order Merchandise Trade Regulation Rule: FTC File No. R511929,'' both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) 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) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Background:

The MTOR, 16 CFR Part 435, was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship merchandise ordered by mail on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. Accordingly, the Commission amended the Rule, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem (*e.g.*, Internet sales), and the Rule was then renamed the ''Mail or Telephone Order Merchandise Rule.''

Generally, the MTOR requires a merchant to: (1) have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised and, if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.[2]

The notice provisions in the Rule require a merchant who is unable to ship within the promised shipment time

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] The MTOR does not impose a recordkeeping requirements *per se*. 16 CFR § 435.1(d) provides that, in an action for noncompliance, the absence of records that establish that a respondent-seller uses systems and procedures to assure compliance will create a rebuttable presumption that the seller was not compliant, but the MTOR does not require a compliant seller to maintain any records.

or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the MTOR requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

Burden Statement:

Estimated total annual hours burden: 2,401,000 hours (rounded to the nearest thousand)

In its 2006 PRA-related **FEDERAL REGISTER** Notices[3] and corresponding submission to OMB, FTC staff estimated that established companies each spend an average of 50 hours per year on compliance with the Rule, and that new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.[4] Thus, the total estimated hours burden was calculated by multiplying the estimated number of established companies x 50 hours, multiplying the estimated number of new entrants x 230 hours, and adding the two totals.

No provisions in the Rule have been amended or changed since staff's prior submission to OMB. Thus, the Rule's disclosure requirements remain the same. Since then, however, the number of businesses engaged in the sale of merchandise by mail or by telephone has changed. Data from the U.S. Department of Commerce 2009 Statistical Abstract[5] indicates that between 2000 and 2005 the number of businesses subject to the MTOR grew from 26,800 to 33,600, or an average increase of 1,360 new businesses a year [(33,600 businesses in 2005 - 26,800 businesses in 2000) ÷ 5 years].[6] Assuming this growth rate continues, the average number of established businesses during the three-year period for which OMB clearance is sought for the Rule would be 41,760.[7]

Accordingly, staff estimates industry hours to comply with the MTOR during each year of the three-year OMB clearance period by then will be:

Year:	Established Businesses	New Entrants
2010	40,400	1,360
2011	41,760	1,360
2012	43,120	1,360
Average:	41,760	1,360

In an average year during the three-year OMB clearance period, staff estimates that established businesses and new entrants will devote 2,401,000 hours, rounded to the nearest thousand, to comply with the MTOR [(41,760 established businesses x 50 hours) + (1,360 new entrants x 230 hours) = 2,400,800].

The estimated PRA burden per merchant to comply with the MTOR is likely overstated. The mail-order industry has been subject to the basic provisions of the Rule since 1976 and the telephone-order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Moreover, arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Industry trade associations and individual witnesses have consistently taken the position that compliance with the MTOR is widely regarded by direct marketers as being good business practice. Providing consumers with notice about the status of their orders fosters consumer loyalty and encourages repeat purchases, which are important to direct marketers' success. Accordingly, the Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute ''burden'' under the PRA.[8]

Estimated labor costs: $47,108,000 (rounded to the nearest thousand)

FTC staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. According to the most recent mean hourly income data available from the Bureau of Labor and Statistics, average payroll in 2008 for miscellaneous sales and related workers was $19.62/hr. Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for miscellaneous sales and related workers is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses for MTOR compliance during the three-year period for which OMB approval is sought would be approximately $47,108,000 (2,401,000 hours x $19.62/hr.), rounded to the nearest thousand. Relative to direct industry sales, this total is negligible.[9]

Estimated annual non-labor cost burden: $0 or minimal

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, *i.e.*, inventory and order management, and customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities

[3] 71 FR 60530 (Oct. 13, 2006); 71 FR 77751 (Dec. 27, 2006).

[4] Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

[5] *See* Table 1008, ''Retail Trade Establishments, Employees and Payroll: 2000 and 2005,'' U. S. Census Bureau, Statistical Abstract of the United States: 2009 (128th Edition), Washington, DC, 2008 ((*http://www.census.gov/compendia/statab/tables/09s1008.pdf*)).

[6] Conceptually, this might understate the number of new entrants in that it does not factor in the possibility that established businesses from an earlier year's comparison might have exited the market preceding the later year of measurement. Given the virtually unlimited diversity of retail establishments, it is very unlikely that there is a reliable external measure of such exit; nonetheless, as in the past, the Commission invites public comment that might better inform these estimates.

[7] As noted above, the existing OMB clearance for the Rule expires on January 31, 2010 and the FTC is seeking to extend the clearance through January 31, 2013. The average number of established businesses during the three-year clearance period was determined as follows: [(33,600 businesses in 2005 + (1,360 new entrants per year x 5 years)) + (33,600 businesses in 2005 + (1,360 new entrants per year x 6 years)) + (33,600 businesses in 2005 + (1,360 new entrants per year x 7 years))]÷3 years.

[8] Conceivably, in the three years since the FTC's most recent clearance request to OMB for this Rule, many businesses have upgraded the information management systems needed to comply with the Rule and to track orders more effectively. These upgrades, however, were primarily prompted by the industry's need to deal with growing consumer demand for merchandise (resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet). Accordingly, most companies now provide updated order information of the kind required by the Rule in their ordinary course of business. Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[9] Based on a $13.786 billion average yearly increase in sales for ''electronic shopping and mail-order houses'' from 2000 to 2007 (according to the 2009 Statistical Abstract), staff estimates that total mail or telephone order sales to consumers in the three-year period for which OMB clearance is sought will average $265.5 billion. Thus, the projected average labor cost for MTOR compliance by existing and new businesses for that period would amount to less than 0.018% of sales.

stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

David C. Shonka,

Acting General Counsel.

[FR Doc. E9–25030 Filed 10–16–09: 10:32 am]

Billing code: 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 092 3139]

Onyx Graphics, Inc.; Analysis of Proposed Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before November 5, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Onyx Graphics, File No. 092 3139'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/onyxgraphics*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://public.commentworks.com/ftc/onyxgraphics*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Onyx Graphics, File No. 092 3139'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Molly Crawford (202-326-3076) or Katie Ratte' (202-326-3514), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 6, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement from Onyx Graphics, Inc. (''Onyx Graphics'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that Onyx Graphics made to consumers concerning its participation in the Safe Harbor privacy framework (''Safe Harbor'') agreed upon by the U.S. and the European Union (''EU''). It is among the Commission's first cases to challenge deceptive claims about the Safe Harbor. The Safe Harbor provides a mechanism for U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with seven principles and related requirements. Commerce maintains a public website, (*www.export.gov/safeharbor*), where it posts the names of companies that have self-certified to the Safe Harbor. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor framework.

Onyx Graphics develops and markets commercial printing software and solutions for the digital color printing marketplace, including through a website (*www.onyxgfx.com*). According to the Commission's complaint, since at least October 2006, Onyx Graphics has set forth on its website privacy policies and statements about its practices, including statements that it is a current participant in the Safe Harbor.

The Commission's complaint alleges that Onyx Graphics falsely represented that it was a current participant in the Safe Harbor when, in fact, from August 2007 until July 2009, Onyx Graphics was not a current participant in the Safe Harbor. The Commission's complaint alleges that in August 2006, Onyx Graphics submitted a self-certification to Commerce, which it did not renew in August 2007. Commerce then updated the company's status to ''not current'' on the Commerce public website. Onyx Graphics remained in ''not current'' status until it submitted a self-certification to Commerce in July 2009.

The proposed order applies to Onyx Graphics's representations about its membership in any privacy, security, or any other compliance program sponsored by the government or any other third party. It contains provisions designed to prevent Onyx Graphics from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Onyx Graphics from making misrepresentations about its membership in any privacy, security, or any other compliance program sponsored by the government or any other third party.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Onyx Graphics to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Onyx Graphics submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–24995 Filed 10–16–09: 9:31 am]

BILLING CODE: 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Research Mentoring Dyad: Comparing the Views of Faculty Advisors/Mentors and Their Ph.D. Students on Training/Learning to Be a Responsible Researcher—OMB No. 0990–New—Office of Research Integrity (ORI).

Abstract: This effort is consistent with the directive to ORI to ''focus more on preventing misconduct and promoting research integrity'' (**Federal Register:** May 12, 2000, Volume 65, Number 93). Study results will be used to promote mentoring best practices, in particular for the responsible conduct of research, by raising awareness of the role of faculty members in developing young scientists, promoting discussion in the scientific community, and informing institutions on where and how to focus resources from the unique perspective of both faculty and doctoral student. To gather information to promote ORI's objectives, this study will use in-depth personal interviews with 100 faculty who participated in the ORI Faculty Survey and agreed to be re-contacted and 100 matched doctoral students who have graduated in the last five years. These one-time interviews will be used to find out how faculty and their students view the training and education of responsible researchers. Interviews with matched faculty/doctoral student pairs will provide a unique opportunity to compare these two perspectives and will strengthen and elaborate on the ORI Faculty Survey results.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Interview Protocol	Faculty	100	1	2	200
Interview Protocol	Doctoral Student Graduates	100	1	2	200
Total					400

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–25028 Filed 10–16–09; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee's Implementation Workgroup Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory subcommittee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee's Implementation Workgroup.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee. The Implementation Workgroup is charged with benchmarking adoption rates for proposed standards across diverse settings; soliciting public input on what stakeholders need to lower the barriers to standards adoption; evaluating the degree to which proposed standards achieve policy objectives; and establishing an ongoing process to gather public input to inform future standards development, revisions to existing standards, or guidance on tools to minimize the cost of adoption.

Date and Time: The meeting will be held on October 29, 2009, from 9 a.m. to 3 p.m./Eastern Time.

Location: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC. The hotel telephone number is 202–234–0700.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, *Fax:* 202–690–6079, *e-mail: judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The Implementation Workgroup will be hearing testimony from stakeholder groups, such as purchasers, vendors, and users, on health information technology adoption experiences with the proposed standards. The Workgroup intends to monitor the adoption rate of proposed standards, identify opportunities to accelerate implementation, and establish a continuous feedback loop on the development of new or revised standards.

In addition to soliciting verbal and formal written comments at the hearing, the Workgroup will use a Web-based tool to engage the public. The ONC is setting up a Web-based tool to engage the public in the topic; please visit the ONC Web site closer to the meeting date for additional information.

ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory subcommittee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov*. The meeting will be available via Webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person from October 29th until November 12, 2009. Oral comments from the pubic will be scheduled at the close of the meeting on October 29, 2009. Time allotted for each presentation may be limited. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business on that day.

Persons attending Committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: October 13, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–25051 Filed 10–14–09; 4:15 pm]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation for Members of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

Authority: 42 U.S.C. 300aa–5, Section 2105 of the Public Health Service (PHS)

Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The National Vaccine Program Office (NVPO), a program office within the Office of Public Health and Science, DHHS, is soliciting nominations of qualified candidates to be considered for appointment as public members to the National Vaccine Advisory Committee (NVAC). The activities of this Committee are governed by the Federal Advisory Committee Act (FACA). Management support for the activities of this Committee is the responsibility of the NVPO.

Consistent with the National Vaccine Plan, the Committee advises and makes recommendations to the Assistant Secretary for Health in his capacity as the Director of the National Vaccine Program, on matters related to the Program's responsibilities. Specifically, the Committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States; recommends research priorities and other measures to enhance the safety and efficacy of vaccines. The Committee also advises the Assistant Secretary for Health in the implementation of Sections 2102 and 2103 of the PHS Act; and identifies annually the most important areas of government and non-government cooperation that should be considered in implementing Sections 2102 and 2103 of the PHS Act.

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. EDT on November 16, 2009, at the address below.

ADDRESSES: *All nominations should be mailed or delivered to:* Bruce G. Gellin, M.D., M.P.H., Executive Secretary, NVAC, Office of Public Health and Science, Department of Health and Human Services, 200 Independence Avenue, SW., Room 715–H, Hubert H. Humphrey Building, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Krull, Public Health Advisor, National Vaccine Program Office, Department of Health and Human Services, 200 Independence Avenue, SW., Room 715–H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690–5566; *nvpo@hhs.gov.*

A copy of the Committee charter which includes the Committee's structure and functions as well as a list of the current membership can be obtained by contacting Ms. Krull or by accessing the NVAC Web site at: *www.hhs.gov/nvpo/nvac.*

SUPPLEMENTARY INFORMATION:

Committee Function, Qualifications, and Information Required: As part of an ongoing effort to enhance deliberations and discussions with the public on vaccine and immunization policy, nominations are being sought for interested individuals to serve on the Committee as public members. Individuals selected for appointment to the Committee will serve as voting members. The Committee is composed of 15 public members, including the Chair, and two representative members. In accordance with the Committee charter, public members shall be selected from individuals who are engaged in vaccine research or the manufacture of vaccines, or who are physicians, members of parent organizations concerned with immunizations, representatives of state or local health agencies or public health organizations. Representative members shall be selected from the vaccine manufacturing industry who are engaged in vaccine research or the manufacture of vaccines. Individuals selected for appointment to the Committee can be invited to serve terms of up to four years.

All NVAC members are authorized to receive the prescribed per diem allowance and reimbursement for travel expenses that are incurred to attend meetings and conduct authorized Committee-related business, in accordance with Standard Government Travel Regulations. Individuals who are appointed to serve as public members are authorized also to receive honorarium for attending Committee meetings and to carry out other authorized Committee-related business. Individuals who are appointed to serve as representative members for a particular interest group or industry are not authorized to receive honorarium for the performance of these duties.

This announcement is to solicit nominations of qualified candidates to fill positions on the NVAC that are scheduled to be vacated in the public member category. The positions are scheduled to be vacated on March 31, 2010.

Nominations

In accordance with the charter, persons nominated for appointment as members of the NVAC should be among authorities knowledgeable in areas related to vaccine safety, vaccine effectiveness, and vaccine supply. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address and daytime telephone number, and the home and/or work address, telephone number, and e-mail address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae.

Individuals can nominate themselves for consideration of appointment to the Committee. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable. Applications cannot be submitted by facsimile. The names of Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made that a broad representation of geographic areas, gender, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as public members of Federal advisory committees. Individuals appointed to serve as public members of Federal advisory committees are classified as special Government employees (SGEs). SGEs are Government employees for purposes of the conflict of interest laws. Therefore, individuals appointed to serve as public members of NVAC are subject to an ethics review. The ethics review is conducted to determine if the individual has any interests and/or activities in the private sector that may conflict with performance of their official duties as a member of the Committee. Individuals appointed to serve as public members of the

Committee will be required to disclose information regarding financial holdings, consultancies, and research grants and/or contracts.

Dated: October 6, 2009.

Bruce Gellin,

Director, National Vaccine Program Office, Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. E9–25079 Filed 10–16–09; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0302] (formerly Docket No. 2007D–0185)

Guidance for Industry and Review Staff on Labeling for Human Prescription Drug and Biological Products—Determining Established Pharmacologic Class for Use in the Highlights of Prescribing Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry and review staff entitled ''Labeling for Human Prescription Drug and Biological Products—Determining Established Pharmacologic Class for Use in the Highlights of Prescribing Information.'' This guidance is intended to provide applicants and review staff with a definition of established pharmacologic class and to help them identify the most appropriate word (term) or phrase that describes the established pharmacologic class for a drug or biological product for inclusion in the *Indications and Usage* section of Highlights of Prescribing Information (*Highlights*) of approved labeling. This guidance finalizes the draft guidance published in the **Federal Register** on May 16, 2007.

DATES: Submit electronic or written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Submit electronic comments to *http://www.regulations.gov.* Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Laurie B. Burke, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6462, Silver Spring, MD 20993–0002, 301–796–0136; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration,1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and review staff entitled ''Labeling for Human Prescription Drug and Biological Products—determining Established Pharmacologic Class for Use in the Highlights of Prescribing Information.'' This guidance is intended to provide applicants and review staff with a definition of established pharmacologic class and to help them identify the most appropriate word (term) or phrase that describes the established pharmacologic class for a drug or biological product for inclusion in the *Indications and Usage* section of *Highlights* of approved labeling, as required under 21 CFR 201.57(a)(6).

In January 2006, FDA published a final rule that amended the requirements for the content and format of labeling for human prescription drug and biological products.[1]

The new labeling format is intended to make it easier for health care professionals to access, read, and use the information in prescription drug labeling, thereby facilitating professionals' use of labeling to make prescribing decisions.

The rule requires that the following statement appear under the *Indications and Usage* section of *Highlights* if a drug is a member of an established pharmacologic class:[2]

''(Drug) is a (name of class) indicated for (indication(s)).''

If the drug is not a member of an established pharmacologic class, the name of class component of this statement should be omitted.

Knowing the established pharmacologic class can provide health care professionals with important information about what to expect from a drug and how it relates to other therapeutic options. Such information can also help reduce the risk of duplicative therapy and drug interactions. This guidance provides recommendations for identifying the established pharmacologic class and its appropriate term for inclusion in the *Indications and Usage* section of *Highlights*.

A draft version of this guidance was made available for public comment in 2007 (72 FR 27576, May 16, 2007). All of the public comments we received have been considered and the guidance has been revised as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The information collection associated with the final rule entitled ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' is approved by OMB under Control Number 0910–0572. The submission of prior-approval labeling supplements, as described in section VI of the guidance, is approved by OMB under Control Numbers 0910–0001 and 0910–0338.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. Submit a single copy of electronic

[1] See ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' (71 FR 3922, January 24, 2006; 21 CFR parts 201, 314, 601).

[2] See § 201.57(a)(6).

comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.regulations.gov*.

Dated: October 13, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–24991 Filed 10–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Availability of the Draft Expert Panel Report on Soy Formula; Request for Public Comment on the Draft Report; Announcement of the Soy Formula Expert Panel Meeting

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Availability of draft report, request for public comment, and announcement of a meeting.

SUMMARY: The CERHR announces the availability of the draft expert panel report on soy formula on October 19, 2009, on the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in printed text from CERHR (*see* **FOR FURTHER INFORMATION CONTACT** below). The CERHR invites the submission of public comments on chapters 1–4 of the draft expert panel report (*see* **SUPPLEMENTARY INFORMATION** below). The expert panel will meet on December 16–18, 2009, at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314 (*Tel:* 1–703–837–0440) to review and revise the draft expert panel report and reach conclusions regarding whether exposure to soy formula is a hazard to human development. The expert panel will also identify data gaps and research needs. CERHR expert panel meetings are open to the public with time scheduled for oral public comment. Attendance is limited only by the available meeting room space. Following the expert panel meeting and completion of the expert panel report, the CERHR will post the final report on its Web site and solicit public comment on it through a **Federal Register** notice.

DATES: The expert panel meeting for soy formula will be held on December 16–18, 2009. Chapters 1–4 of the draft expert panel report will be available for public comment on October 19, 2009. Written public comments on the draft report must be received by December 2, 2009. Time is set aside at the expert panel meeting on December 16, 2009, for oral public comments. Individuals wishing to make oral public comments are asked to register online (*http://cerhr.niehs.nih.gov*) or contact Dr. Kristina A. Thayer, CERHR Acting Director, by December 9, 2009, and if possible, send a copy of the statement and/or slide presentation at that time. Persons wishing to attend are asked to register by December 9, 2009 via the CERHR Web site (*http://cerhr.niehs.nih.gov*).

ADDRESSES: Public comments and any other correspondence should be submitted to Dr. Kristina A. Thayer, CERHR Acting Director, NIEHS, P.O. Box 12233, Mail Drop K2–04, Research Triangle Park, NC 27709 (mail), 919–541–5021 (telephone), or *thayer@niehs.nih.gov* (e-mail). *Courier address:* NIEHS, 530 Davis Drive, Room K2154, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. Kristina A. Thayer (*telephone:* 919–541–5021 or e-mail: *thayer@niehs.nih.gov*). Persons needing interpreting services in order to attend should contact (301) 402–8180 (voice) or (301) 435–1908 (TTY). Requests should be made at least seven business days in advance of the meeting.

SUPPLEMENTARY INFORMATION:

Background

Soy formula is fed to infants as a supplement or replacement for human milk or cow milk. Soy formula contains isoflavones such as genistein (CAS RN: 446–72–0), daidzein (CAS RN: 486–66–8), and glycitein (CAS RN: 40957–83–3). Genistein, daidzein, glycitein, and the daidzein metabolite equol are non-steroidal, estrogenic compounds that occur naturally in some plants and are often referred to as ''phytoestrogens.'' In plants, nearly all genistein, daidzein, and glycitein is linked to a sugar molecule and these isoflavone-sugar complexes are called genistin, daidzin, or glycitin.

On March 15–17, 2006, CERHR convened an expert panel to conduct evaluations of the potential developmental and reproductive toxicities of soy formula and its predominant isoflavone constituent genistein. CERHR selected soy formula and genistein for expert panel evaluation because of (1) the availability of numerous reproductive and developmental toxicity studies in laboratory animals and humans, (2) the availability of information on exposures in infants and women of reproductive age, and (3) public concern for effects on infant or child development. The expert panel reports were released for public comment on May 5, 2006 (71 FR 28368). On November 8, 2006 (71 FR 65537), CERHR staff released draft NTP Briefs on Genistein and Soy Formula that provided the NTP's interpretation of the potential for genistein and soy formula to cause adverse reproductive and/or developmental effects in exposed humans. CERHR has not completed these evaluations, finalized the briefs, or issued NTP–CERHR monographs on these substances. Since 2006, a substantial number of new publications related to human exposure or reproductive and/or developmental toxicity have been published for these substances. CERHR has determined that updated evaluations of genistein and soy formula are needed. However, the current evaluation will focus on soy formula and the potential developmental toxicity of its major isoflavone components, *e.g.,* genistein, daidzein, and glycitein. This evaluation will not include an assessment on the potential reproductive toxicity of genistein following exposures during adulthood as was done in the 2006 evaluation. CERHR is narrowing the scope of the evaluation because the assessment of reproductive effects of genistein following exposure to adults was not considered relevant in the consideration of soy formula use in infants during the initial evaluation in 2006.

At the meeting, the expert panel will review and revise the draft expert panel report and reach conclusions regarding whether exposure to soy formula is a hazard to human development. The draft expert panel report has the following chapters:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
  a. Developmental Toxicity Data for Genistein, Daidzein, Equol, and Glycitein
  b. Developmental Toxicity Data for Soy Formula and Other Soy

Products
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs (to be developed at the expert panel meeting).

Request for Comments

CERHR invites written public comments on chapters 1–4 of the draft expert panel report on soy formula. Any comments received will be posted on the CERHR Web site prior to the meeting and distributed to the expert panel and CERHR staff for their consideration in revising the draft report and/or preparing for the expert panel meeting. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone number, e-mail, and sponsoring organization, if any) and send them to Dr. Thayer (*see* **ADDRESSES** above) for receipt by December 2, 2009. Comments will be identified on the Web site by the submitter's name, affiliation, and/or sponsoring organization.

Time is set aside on December 16, 2009 for the presentation of oral public comments at the expert panel meeting. Seven minutes will be available for each speaker (one speaker per organization). Online registration is available on the CERHR website or persons wishing to make oral remarks can contact Dr. Thayer. If possible, send a copy of the statement, talking points, and/or slide presentation to Dr. Thayer by December 2. This statement will be provided to the expert panel to assist them in identifying issues for discussion and noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on December 16, 2009, from 7:30–8:30 a.m. Persons registering at the meeting are asked to bring 30 copies of their statement, talking points, and/or slide presentation for distribution to the expert panel and for the record.

Attendance and Registration

In order to facilitate planning for this meeting, persons wishing to attend are asked to register by December 9, 2009, via the CERHR Web site (*http://cerhr.niehs.nih.gov*).

Preliminary Agenda

The meeting begins each day at 8:30 a.m. On December 16 and 17, it is anticipated that a lunch break will occur from noon–1 p.m. and the meeting will adjourn at 5–6 p.m. The meeting is expected to adjourn by noon on December 18, 2009; however, adjournment may occur earlier or later depending upon the time needed by the expert panel to complete its work. Anticipated agenda topics for each day are listed below.

December 16, 2009

- Opening remarks;
- Oral public comments (7 minutes per speaker; one representative per group);
- Review of chapters 1–4 of the draft expert panel report on soy formula;
- Discussion of Chapter 5.0 Summary, Conclusions, and Critical Data Needs.

December 17, 2009

- Discussion of Chapter 5.0 Summary, Conclusions, and Critical Data Needs;
- Preparation of draft summaries and conclusion statements.

December 18, 2009

- Presentation, discussion of, and agreement on summaries, conclusions, and data needs;
- Closing comments.

Background Information on the CERHR

The NTP established CERHR in 1998 (63 FR 68782). CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. CERHR follows a formal process for the evaluation of selected substances that includes opportunities for public input.

CERHR invites the nomination of substances for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Thayer (*see* **ADDRESSES** above). CERHR selects substances for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies. Expert panels conduct scientific evaluations of substances selected by CERHR in public forums. Following these evaluations, CERHR prepares the NTP–CERHR monograph on the substance evaluated. The monograph is transmitted to appropriate Federal and State agencies and made available to the public.

Dated: October 8, 2009.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. E9–25122 Filed 10–16–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0143]

Risk Evaluation and Mitigation Strategies for Certain Opioid Drugs; Notice of Public Meeting; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until October 19, 2010, the comment period for the notice of public meeting published in the **Federal Register** of April 20, 2009 (74 FR 17967). In that notice, FDA announced a public meeting that took place on May 27 and 28, 2009, to solicit input on developing Risk Evaluation and Mitigation Strategies (REMS) for certain opioid drugs. FDA is reopening the comment period in light of continued public interest in this topic and to provide an opportunity for all interested parties to provide information and share views on the matter.

DATES: Submit written or electronic comments by October 19, 2010.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Theresa (Terry) Martin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6196, Silver Spring, MD 20993–0002, 301–796–3448; FAX: 301–847–8752, e-mail: *OpioidREMS@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 20, 2009 (74 FR 17967), FDA published a notice of a public meeting on developing REMS for certain opioid drugs. The affected opioid drugs include long acting and extended release brand name and generic products that are formulated with the following active ingredients: Fentanyl, hydromorphone, methadone, morphine, oxycodone, and oxymorphone. The REMS would be intended to ensure that the benefits of these drugs continue to outweigh risks associated with: (1) Use of high doses of long acting opioid and extended release

opioid products in non-opioid tolerant and inappropriately selected individuals; (2) abuse; (3) misuse; and (4) overdose, both accidental and intentional. REMS for these opioids would likely include elements to assure safe use to ensure that prescribers, dispensers, and patients are aware of and understand the risks and proper use of these products. The opioid drugs expected to be subject to REMS are widely prescribed by a large number of physicians who practice in a wide variety of areas. A REMS that will adequately manage the risks of these products without unduly burdening the health care system or reducing patient access to these medications must be carefully designed. Recognizing this challenge, we identified several specific areas in which FDA wishes to obtain information and public comment in our April 2009 notice of public meeting.

Interested persons were originally given until June 30, 2009, to comment. As a result of continued public interest, FDA is reopening the comment period until October 19, 2010 to allow interested persons additional time to provide information and share views on this topic.

II. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.regulations.gov* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 9, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–25022 Filed 10–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: OMB–48, InfoPass System; New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: OMB–48, InfoPass System.

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 July 28, 2009, at 74 FR 37234, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 18, 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, 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 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail, please make sure to add OMB–48 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 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:* New Information collection.

(2) *Title of the Form/Collection:* InfoPass System.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–48. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The InfoPass system allows an applicant or petitioner to schedule an interview appointment with USCIS through USCIS' Internet Web site.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,043,319 responses at 6 minutes (.10) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 104,332 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: October 14, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–25042 Filed 10–16–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–690; Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Form I–690, Application for Waiver of Grounds of Excludability; OMB Control Number 1615–0032.

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 June 25, 2009, at 74 FR 30312, allowing for a 60-day public comment period. USCIS did not receive any comments on the form or instructions. However, USCIS did receive one comment concerning waivers. This comment has been forwarded to the appropriate USCIS office for a response.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 18, 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, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0032 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 a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–690. 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. USCIS will use this form to determine whether applicants are eligible for admission to the United States under sections 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 21 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: October 14, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–25043 Filed 10–16–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2009–0026]

Notice of Meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) will meet on November 4, 2009 in Washington, DC. The meeting will be open to the public.

DATES: COAC will meet Wednesday, November 4, 2009 from 9 a.m. to 1 p.m. Please note that the meeting may close early if the committee completes its business. If you plan on attending, please register either online at *http://www.cbp.gov/xp/cgov/trade/trade_outreach/coac/*, or by e-mail to *tradeevents@dhs.gov* by close-of-business on Friday, October 30, 2009.

ADDRESSES: The meeting will be held at the Ronald Reagan Building in the Atrium Hall, 1300 Pennsylvania Avenue, NW., Washington, DC. Written material, comments, as well as any requests to have copies of your submitted materials distributed to committee members prior to the meeting should reach the contact person at the address below by October 30, 2009. Comments must be identified by USCBP–2009–0026 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: tradeevents@dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 202–325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by COAC, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229; *tradeevents@dhs.gov*; telephone 202–344–1440; facsimile 202–325–4290.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), DHS hereby announces the meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The third meeting of the eleventh term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. Trade Facilitation Subcommittee.
2. Importer Security Filing (''10+2'').
3. Intellectual Property Rights Enforcement Subcommittee.
4. Agriculture Subcommittee.
5. Air Cargo Security Subcommittee.
6. Automation Subcommittee.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan Building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice by close-of-business on Friday, October 30, 2009, by registering online at *http://www.cbp.gov/xp/cgov/trade/trade_outreach/coac/* or, alternatively, by contacting Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; *tradeevents@dhs.gov*; telephone 202–344–1440; facsimile 202–325–4290.

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, contact Ms. Wanda Tate as soon as possible.

Dated: October 13, 2009.

Kimberly Marsho,

Director, Office of Trade Relations, U.S. Customs and Border Protection.

[FR Doc. E9–25074 Filed 10–16–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Executive Office for United States Attorney

[OMB Number 1105–0082]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Office of Legal Education Nomination/Confirmation Form.

The Department of Justice (DOJ), Executive Office for United States Attorneys (EOUSA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tawana Fobbs, EOUSA, 600 E Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* OLE Nomination Form (OLE–01) and Confirmation Form (OLE–02)

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* OLE–01 and OLE–02. Executive Office for United States Attorneys, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government. *Other:* State, Local, or Tribal Government. The forms are used by the Federal, State, Local, and International law enforcement community to request training.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,140 respondents will complete each form within approximately 4 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 143 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–25009 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act

Notice is hereby given that on October 2, 2009, a proposed consent decree in *United States* v. *East Shoshone County Water District*, Civil Action No. 09–00499–EJL, was lodged with the United States District Court for the District of Idaho.

In this action the United States sought injunctive relief and a civil penalty for violations of the Safe Drinking Water Act at the East Shoshone County Water District's public water system in Burke Canyon near Wallace, Idaho. The Water District has agreed to install a filtration system and to perform other injunctive relief. Additionally, the Water District will pay a $5,000 civil penalty and will perform an environmental project that is estimated to cost approximately $20,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *East Shoshone County Water District*, Civil Action No. 09–00499–EJL, DOJ Ref. 90–5–1–1–08453.

During the public comment period, the consent decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–25076 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0075]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection under Review: Transactions Among Licensees/Permittees, Limited.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Miller, Explosives Industry Programs Branch, Room 6E405, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Transactions Among Licensees/Permittees, Limited.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. A licensed importer, licensed manufacturer, or licensed dealer may distribute explosive materials to a holder of a limited permit if the holder of such permit is a resident of the same State in which the licensee's business premise is located. A holder of a limited permit may receive explosive materials on no more than 6 separate occasions during the one-year period of the permit. A holder of a user permit may dispose of surplus stocks of explosive materials to the holder of a limited permit who is a resident of the same State in which the premises of the holder of the user permit are located. A licensed importer, licensed manufacturer, licensed dealer or permittee, must, prior to delivering the explosive materials, obtain from the limited permitee a current list of the persons who are authorized to accept deliveries of the explosive materials on behalf of the limited permittee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50,000 respondents will take 30 minutes to comply with the required information.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 25,000 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–25004 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0006]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application and Permit for Importation of Firearms, Ammunition and Implements of War.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin Boydston, Chief, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Importation of Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6, Part II (5330.3B). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, Federal Government, State, Local or Tribal Government. The information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The information is used to secure authorization to import such articles. The form is used by persons who are members of the United States Armed Forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 9,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,500 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–25012 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0010]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 152, page 39975 on August 10, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5320.20. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. The information is used by ATF to determine the lawful transportation of an NFA firearm and/or to pursue the criminal investigation into an unregistered NFA firearm.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 800 respondents, who will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 400 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–25014 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0064]

Agency Information Collection Activities: Proposed Collection; Comments Requested:

ACTION: 60-Day Notice of Information Collection Under Review: Application for Restoration of Explosives Privileges.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Miller, Explosives Industry Programs Branch, 99 New York Avenue, NE., Room 6E405, Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Restoration of Explosives Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.29. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. ATF F 5400.29 is required in order to determine whether or not explosive privileges may be restored. The form is used to conduct an investigation to establish if it is likely that the applicant will act in a manner dangerous to public safety or contrary to public interest.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–25027 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0066]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 152, page 39973, on August 10, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 18, 2009. This

process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* none. *Abstract:* These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50 respondents, who will take 15 minutes per line entry and that 26 entries will be made per year.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 325 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–25026 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0022]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Federal Explosives License/Permit (FEL) Renewal Application.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 152, page 39974, on August 10, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Explosives License/Permit (FEL) Renewal Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.14/5400.15, Part III. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Federal Government, State, Local, or Tribal Government. *Abstract:* The form is used for the renewal of an explosive license or permit. The renewal application is used by ATF to determine that the applicant remains eligible to retain the license or permit .

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 2,500 respondents, who will complete the form within approximately 20 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:*

There are an estimated 825 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–25016 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0017]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 152, page 39972, on August 10, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 18, 2009. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5300.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Federal Government, State, Local, or Tribal Government. *Abstract:* ATF collects this data for the purpose of witness qualifications, congressional investigations, court decisions and disclosure and furnishing information to other Federal agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,500 respondents, who will complete the form within approximately 45 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,125 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–25015 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0008]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Application and Permit For Permanent Exportation of Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 152, page 39975 on August 10, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Permit Exportation of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 9 (5320.9). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. *Abstract:* The form is used to obtain permission to export firearms and serves as a vehicle to allow either the removal of the firearms from registration in the National Firearms Registration and Transfer Record or collection of an excise tax. It is used by Federal firearms licensees and others to obtain a benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 70 respondents, who will complete the form within approximately 18 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 11 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–25013 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0001]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: ATF Distribution Center Contractor Survey.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 152, page 39972 on August 10, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 collection.

(2) *Title of the Form/Collection:* ATF Distribution Center Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 1370.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. *Abstract:* The information provided on the form is used to evaluate the ATF Distribution Center contractor and the services it provides the users of ATF forms and publications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 21,000 respondents, who will complete the form within approximately 1 minute.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 200 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–25011 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0075]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Limited Permitee Transaction Record.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 15, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Miller, Explosives Industry Programs Branch, Room 6E405, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. The purpose of this collection is to ensure that records are available for tracing explosive materials when necessary and to ensure that limited permittees do not exceed their maximum allotment of receipts of explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5,000 respondents will spend approximately 5 minutes to receive, file, and forward the appropriate documentation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 12,000 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–25008 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0025]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Limited Permittee Transaction Report.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christopher R. Reeves, Chief, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other

for-profit. The Limited permittees are required to complete ATF 5400.4 prior to receiving explosive materials. The form verifies that all persons who are purchasing explosive materials have the proper Federal permit and to ensure that such persons have appropriate facilities for storage of the explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 400 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 792 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E9–25005 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0072]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Revision of a currently approved collection; Employee Possessor Questionnaire.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 152, page 39974, on August 10, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Employee Possessor Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.28. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. *Abstract:* Each employee possessor in the explosives business or operations required to ship, transport, receive, or possess (actual or constructive), explosive materials must submit this form. ATF F 5400.28 will determine the eligibility of the employee possessor to possess explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 10,000 respondents, who will complete the form within approximately 20 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 3,334 total burden hours associated with this collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–25006 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0043]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: National Tracing Center Trace Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Neil Troppman, ATF National Tracing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Tracing Center Trace Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3312.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government. *Other:* State, Local, or Tribal Government. The form is used by the Federal, State, Local, and International law enforcement community to request that ATF trace firearms used, or suspected to have been used, in crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 112,123 respondents will complete the form within 6 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 11,212 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–25007 Filed 10–16–09; 8:45 am]

BILLING CODE 4410–FY–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, October 22, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from U.S. #1364 Federal Credit Union to Convert to a Community Charter.
2. Request from Kansas State Supervisory Authority for an Exemption from Section 712.3(d)(3) of NCUA's Rules and Regulations.
3. Final Rule—Part 745 of NCUA's Rules and Regulations, Share Insurance and Appendix.
4. Insurance Fund Report.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, October 22, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activities (5). Closed pursuant to some or all of the following exemptions: (8), (9)(A)(ii) and 9(B).
2. Personnel. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. E9–25195 Filed 10–15–09; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at the University of Pennsylvania (Penn) by NSF Division of Materials Research (DMR) Proposal Review Panel for Materials Research, #1203.

Dates & Times: Monday, November 16, 2009; 6 p.m.–9 p.m.

Tuesday, November 17, 2009; 7:45 a.m.–9 p.m.

Wednesday, November 18, 2009; 7:45 a.m.–3:30 p.m.

Place: University of Pennsylvania, Philadelphia, PA.

Type of Meeting: Part-open.

Contact Person: Dr. William Brittain, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–5039.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at the University of Pennsylvania.

Agenda:

Monday, November 16, 2009

6 p.m.–7:30 p.m. Closed—Panel Briefing.
7:30 p.m.–9 p.m. Open—Review of Penn MRSEC.

Tuesday, November 17, 2009

7:45 a.m.–4:45 p.m. Open—Review of the Penn MRSEC.
4:15 p.m.–6 p.m. Closed—Executive Session.
6 p.m.–7 p.m. Open—Poster Session.
7 p.m.–9 p.m. Open—Dinner.

Wednesday, Nov. 18, 2009

8 a.m.–9 a.m. Closed—Executive session.
9 a.m.–9:45 a.m. Open—Review of the Penn MRSEC.
9:45 a.m.–3:30 p.m. Closed—Executive Session, Draft and Review Report.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 14, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–25034 Filed 10–16–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science (1182).

Date and Time: Monday, November 23, 2009, 8:30 a.m.–1:30 p.m.

Place: Conference Room, Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Ms. Mayra Montrose, Program Manager, Room 1282, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. *Telephone:* 703–292–4757.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the 2009 National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 14, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–25032 Filed 10–16–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Human Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Louis Stokes Alliances for Minority Participation Program, Proposal Review Panel for Human Development (1199)

Date/Time: November 9, 2009, 8 a.m.–6:15 p.m. November 10, 2009, 8 a.m.–5 p.m.

Place: Texas A&M University, College Station, TX.

Prairie View A&M University, Prairie View, Texas.

Type of Meeting: Partially closed.

Contact Persons: A. James Hicks, Senior Program Director, Keith James, Program Director or Martha James, Assistant Program Director, Louis Stokes Alliances for Minority Participation Program, National Science Foundation, Arlington, Virginia 703–292–8640.

Purpose of Meeting: NSF post-award site visit to conduct an in-depth evaluation of project performance.

Agenda

Monday, November 9, 2009

8 a.m.–12 p.m. Introductions & Overview, Vision, Strategy & Alliance Program Overview (OPEN);

12:15 p.m.–1:15 p.m. Lunch.

1:15 p.m.–6:15 p.m. Strengths, Weaknesses, Opportunities, Threats (SWOT). Evaluation and Assessment, Issue Generation Executive Session, Report Preparation (CLOSED).

Tuesday, November 10, 2009

8 a.m.–12 p.m. Visit to Prairie View A&M University Meeting with faculty, students, advisory/governing board (OPEN);

12 p.m.–1 p.m. Lunch;

1:15 p.m.–5 p.m. Discussions with Alliance Leadership/Management. Team (CLOSED);

3:15 p.m.–4 p.m. Debriefing and Wrap-Up (CLOSED).

Reason for Closing: Topics to be discussed and evaluated during the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C.552b(c), (4) and (6) of the Government in the Sunshine Act.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–25033 Filed 10–16–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Plan for Collection of Meteorites Issued Under the Antarctic Conservation Act of 1978, as Amended

AGENCY: National Science Foundation.

ACTION: Notice of availability; invitation for comments.

SUMMARY: On March 31, 2003, the National Science Foundation (NSF) issued a final rule that authorized the collection of meteorites in Antarctica for scientific purposes only. These regulations implement Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty and are issued pursuant to Section 6 of the Antarctic Conservation Act, as amended by the Antarctic Science, Tourism and Conservation Act of 1996. The regulations require appropriate collection, handling, and curation of Antarctic meteorites to preserve their scientific value. Antarctic expeditions planning to collect meteorites in Antarctica are required to submit their plans for the collection, handling, and curation of the meteorites to the National Science Foundation. NSF is providing notice of availability of a meteorite collection plan and inviting comments on the plan.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: A meteorite collection plan has been received from Dr. Ralph Harvey of Case Western Reserve University. Interested parties are invited to submit written data, comments, or views with respect to this plan by November 3, 2009. This plan may be inspected by interested parties at the Permit Office, address listed above.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E9–24958 Filed 10–16–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–36–MLA; ASLBP No. 10–894–01–MLA–BD01]

Westinghouse Electric Company, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.105, 2.300, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Westinghouse Electric Company, LLC (Hematite Decommissioning Project)

This proceeding concerns a request for hearing from petitioner Citizens for a Clean Idaho, Inc. submitted in response to a July 6, 2009 Notice of License Amendment Request of Westinghouse Electric Company, LLC for Hematite Decommissioning Project, Festus, Missouri and Opportunity To Request a Hearing (74 FR 31,994; *see also* 74 FR 47, 287 (Sept. 15, 2009)). The license amendment request seeks authorization allowing Westinghouse Electric Company, LLC to transfer decommissioning waste from its former fuel cycle facility in Festus, Missouri to U.S. Ecology Idaho, Inc., a Resource Conservation and Recovery Act Subtitle C disposal facility located near Grand View, Idaho.

The Board is comprised of the following administrative judges:

Paul S. Ryerson, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Mark O. Barnett, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in

accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 9th day of October 2009.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E9–25041 Filed 10–16–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11893 and #11894]

American Samoa Disaster Number AS–00003

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of American Samoa (FEMA–1859–DR), dated 09/29/2009.

Incident: Earthquake, tsunami, and flooding.

Incident Period: 09/29/2009 and continuing through 10/06/2009.

DATES: *Effective Date:* 10/06/2009.

Physical Loan Application Deadline Date: 11/30/2009.

EIDL Loan Application Deadline Date: 06/29/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of American Samoa, dated 09/29/2009 is hereby amended to establish the incident period for this disaster as beginning 09/29/2009 and continuing through 10/06/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–25057 Filed 10–16–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11898]

Arizona Disaster #AZ–00008 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Arizona, dated 10/07/2009.

Incident: Sedona Flash Flood.

Incident Period: 09/10/2009.

DATES: *Effective Date:* 10/07/2009.

EIDL Loan Application Deadline Date: 07/07/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Coconino, Yavapai.

Contiguous Counties:

Arizona; Gila, La Paz, Maricopa, Mohave, Navajo.

Utah: Kane, San Juan.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 118980.

The States which received an EIDL Declaration # are Arizona, Utah.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: October 7, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–25054 Filed 10–16–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11906 and #11907]

Kentucky Disaster #KY–00030

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Kentucky dated 10/09/2009.

Incident: Severe storms and flooding.

Incident Period: 09/25/2009 through 09/26/2009

Effective Date: 10/09/2009

Physical Loan Application Deadline Date: 12/08/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 07/07/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jessamine.

Contiguous Counties:

Kentucky: Fayette, Garrard, Madison, Mercer, Woodford.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.500
Homeowners without Credit Available Elsewhere	2.750
Businesses with Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 119066 and for economic injury is 119070.

The State which received an EIDL Declaration # is Kentucky.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 9, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–25058 Filed 10–16–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Form N–5, SEC File No. 270–172, OMB Control No. 3235–0169.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–5 (17 CFR 239.24 and 274.5)—Registration Statement of Small Business Investment Companies Under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) Form N–5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Investment Act of 1958 and has been notified by the Small Business Administration that the company may submit a license application, to register its securities under the Securities Act of 1933 (''Securities Act''), and to register as an investment company under section 8 of the Investment Company Act of 1940 (''Investment Company Act''). The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission staff reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N–5, the Commission would be unable to carry out the requirements of the Securities Act and the Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is one and the proposed frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total annual burden of 352 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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 in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 13, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–25115 Filed 10–16–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60807; File No. SR–FINRA–2009–064]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Publication of Certain Daily and Monthly Short Sale Data on the FINRA Web Site

October 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously approving the proposed rule change on an accelerated basis.

[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

FINRA is proposing a rule change relating to the publication of certain daily and monthly short sale data on the FINRA Web site. FINRA is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of FINRA.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In coordination with SEC staff, FINRA is publishing on its Web site: (1) aggregate daily short sale volume data by security for NMS stocks[3] and OTC Equity Securities,[4] and (2) monthly short sale transaction data by security for NMS stocks.[5] Due to the more

[3] Rule 600 of SEC Regulation NMS defines ''NMS stock'' as any ''NMS security'' other than an option, and further defines ''NMS security'' as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

[4] FINRA Rule 6420 defines ''OTC Equity Security'' as any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.

[5] By letter dated July 2, 2009, and as discussed in subsequent conversations, SEC staff requested that FINRA publish on its Web site certain daily short sale volume files and monthly short sale transaction files. SEC staff stated that it believes that the publication of this data, and the resulting increased market transparency, may help bolster investor confidence and thereby help promote capital formation.

manual, member-driven reporting structure inherent in the over-the-counter market, FINRA notes that data imperfections may be more likely than with similar reporting by the exchanges. FINRA is filing this proposed rule change to describe the content and parameters of the short sale data files that will be made publicly available on the FINRA Web site.

Daily Short Sale Volume File

For each trading date, FINRA will post on its Web site the daily short sale volume file within a reasonable amount of time after the end of regular trading hours on that trading day.[6] As a general rule, aggregate short sale volume for equity securities executed and reported to any of the FINRA Facilities during regular trading hours will be included in the file.[7] The daily short sale volume file will provide information on the aggregate volume of short sales reported to a consolidated tape out of the total volume of executed trades during regular trading hours on each trading day.[8]

FINRA expects to begin publishing the daily short sale volume file on a going forward basis in October 2009, but no later than the end of fourth quarter 2009.[9] Specifically, the Short Sale Volume File will include the following fields:[10]

Field name	Field description
Date	Trade date (YYYYMMDD).
Symbol	Trading symbol.
Short Volume	Aggregate reported share volume of executed short sale trades during regular trading hours.
Total Volume	Aggregate reported share volume of all executed trades during regular trading hours.
Market	CTA market identifier.

FINRA will not incorporate trading information into the daily short sale volume file that has not been executed and reported within the trading day.[11] Further, FINRA will not retroactively apply ''as of'' and ''reversal'' transactions to update the daily statistics.

Monthly Short Sale Transaction File

For each trading month, FINRA will post on its Web site a monthly short sale transaction file by no later than the last day of the following calendar month that includes, among other things, trade details including the transaction time, price and number of shares for every short sale transaction in an NMS stock. The monthly short sale transaction file request is similar to, but not the same as, the instructions for the Regulation SHO Pilot data.[12] FINRA began publishing the monthly short sale transaction, with the initial file for the month of August 2009 posted on September 30, 2009 (the last day of the following calendar month).

FINRA's monthly short sale transaction file includes all short sales reported to a TRF or the ADF and reported by FINRA to a tape plan.[13] Unlike the daily short sale volume file, the monthly short sale transaction file includes short sale transactions that are reported both during regular trading hours as well as after-hours. While FINRA is not including reversals in the monthly short sale transaction file, the original reversed trade is included. FINRA is also including in each monthly transaction file any ''as of'' trades that were executed and reported within each given month.

The Monthly Short Sale Transaction files contain the following information:[14]

—Market center: As reported on the tape.[15]

—Ticker symbol: CT/CQ, TAQ, or symbols used for trading by the market center.

—Report Date: Date that the trade was reported to the tape.

—Reported Trade Time: In military time, Eastern Time.

—Size of the Trade: Number of shares in mixed or round lots as reported to the tape.

—Price of the Trade: Exactly as reported to the tape.

Other Issues

Once the Daily Short Sale Volume File is made publicly available at the end of each trading day, FINRA notes that users of such data should not expect the daily and monthly data to reconcile because, among other things, monthly transaction data will include reporting through the end of FINRA transaction reporting hours that terminate as late as 8 p.m., while daily volume reports will only include volume reported during regular trading hours.

Information relating to market maker or supplemental liquidity provider status is not currently included in the trade report submission; thus, FINRA currently is unable to separately identify

[6] *See* 17 CFR 242.600(b)(64) (defining ''regular trading hours'').

[7] Transactions may be reported through the Alternative Display Facility (''ADF''), a Trade Reporting Facility (''TRF''), or through the OTC Reporting Facility (''ORF''). The ADF, TRFs and ORF are collectively referred to herein as the ''FINRA Facilities.'' Trades in certain classes of securities, such as Rule 144A securities, are reported to the ORF, but not disseminated. Non-disseminated securities will not be included in either the daily short sale volume file or the monthly short sale transaction file.

[8] Certain OTC transactions (*e.g.,* riskless principal and agency transactions where one member is acting on behalf of another member) are reported to FINRA in related tape and non-tape reports. Tape reports are submitted to FINRA for public dissemination by the appropriate exclusive Securities Information Processor (''SIP''), while non-tape reports are submitted to FINRA, but are not submitted to the SIP for public dissemination. FINRA will not be including non-tape reports in either the daily short sale volume file or the monthly short sale transaction file. Accordingly, in those instances where the short sale indicator is only included in the related non-tape report, the short sale data published in the daily and monthly files may be under-inclusive. Similarly, the published figures will not include odd lots since these transactions are not disseminated to the consolidated tape.

[9] While initial publication of the daily short sale volume file will not commence until fourth quarter 2009, once published, the data will include daily files from August 3rd, 2009. FINRA will retain one year of historical short sale data from the date of initial publication onward on a rolling basis.

[10] The filename will contain the trading date and the reporting SRO (EEEEshvolYYYYMMDD.txt where EEEE represents the reporting SRO and YYYYMMDD represents the date).

[11] While members generally are required to report trades in equity securities to FINRA within 90 seconds, a firm could improperly delay reporting of short sales until well after the close, which would result in the under-reporting of over-the-counter short sale volume. Delaying the reporting of trades for such a purpose would be considered a violation of the applicable trade reporting rules and Rule 2010 (Standards of Commercial Honor and Principles of Trade).

[12] *See* Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (Aug. 6, 2004).

[13] *See supra* note 8.

[14] The data files will include a ''link indicator'' field, which would provide a market center defined character variable to flag records that may have been difficult to match to tape data. This indicator was intended to allow for the dissection of trades that are bulk-reported to the tape; however, because FINRA does not bulk report trades to the tape, this field is not applicable and, therefore, will be left blank.

[15] The ADF, NYSE TRF and NASDAQ TRF files are currently separately designated. FINRA intends at a later date to consolidate the TRF and ADF files in a user-friendly manner.

the trades of equity market makers and supplemental liquidity providers in the monthly short sale transaction file. Therefore, the ''short type'' field will include a value of ''S'' in all cases.

FINRA will retain on the FINRA Web site one year of historical monthly short sale transaction data beginning with the data published on September 30, 2009.

The proposed rule change will become effective upon Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the publication of the requested short sale data will result in increased market transparency, providing additional market information to investors and other interested parties.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to Section 19(b)(2) of the Act,[17] the Commission may not approve any proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. FINRA also has requested that the Commission find good cause for approving the proposed rule change prior to the 30th day after publication in the **Federal Register.** For the Commission to approve a proposed rule change proposed by a national securities association (*i.e.,* FINRA), the proposed rule change must be consistent with the requirements of the Act, including Section 15A(b)(6) of the Act,[18] and the rules and regulations thereunder. Section 15A(b)(6) of the Act requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

After careful consideration, the Commission finds that FINRA's proposed rule change relating to the publication of certain daily and monthly short sale data on the FINRA Web site is consistent with the requirements of the Act,[19] including Section 15A(b)(6) of the Act.[20] In particular, the Commission finds that FINRA's proposed rule change is consistent with Section 15A(b)(6) of the Act [21] in that it is designed to protect investors and the public interest. The Commission notes that the proposed rule change will facilitate public access to short sale data, increase market transparency and thereby promote capital formation.

The Commission also finds that accelerated approval is appropriate. More specifically, accelerated approval will allow FINRA to facilitate public access to information related to short sale volume and transaction data, which many self-regulatory organizations are already publishing on their respective Web sites.

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–FINRA–2009–064 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–FINRA–2009–064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2009–064 and should be submitted on or before November 9, 2009.

V. Conclusion

For the foregoing reasons, pursuant to Section 19(b)(2) of the Act,[22] the Commission finds good cause to approve the proposed rule change on an accelerated basis.

It is hereby ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–FINRA–2009–064) be, and hereby is, approved on an accelerated basis. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–25002 Filed 10–16–09; 8:45 am]

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[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60810; File No. SR–ISE–2009–80]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Market Maker Incentive Plan for Foreign Currency Options

October 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2009, International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 ISE is proposing to extend an incentive plan for market makers in three recently listed foreign currency options (''FX Options'') and make clarifying changes regarding fees for transactions in these FX Options. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 3, 2009, the Exchange began trading options on the New Zealand dollar (''NZD''), the Mexican peso (''PZO'') and the Swedish krona (''SKA'')[3] and adopted an incentive plan applicable to market makers in NZD, PZO and SKA.[4] The purpose of this proposed rule change is to extend the date by which market makers may join the incentive plan. The Exchange also proposes to make clarifying changes regarding fees for transactions in these products.

In order to promote trading in these FX Options, the Exchange has an incentive plan pursuant to which the Exchange waives the transaction fees for the Early Adopter[5] FXPMM[6] and all Early Adopter FXCMMs[7] that make a market in NZD, PZO and SKA for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange pays the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in NZD, PZO and SKA and pays up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in the incentive plan are charged regular transaction fees for trades in these products. In order to participate in the incentive plan, market makers were required to enter into the incentive plan no later than October 5, 2009. The Exchange now proposes to extend the date by which market makers may enter into the incentive plan to December 31, 2009.

[3] The Commission previously approved the trading of options on NZD, PZO and SKA. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (Order approving the listing and trading of FX Options).

[4] *See* Securities Exchange Act Release No. 34–60536 [sic] (August 19, 2009), 74 FR 43204 (August 26, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes and an Incentive Plan for Three Foreign Currency Options).

[5] Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers.

[6] A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[7] A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

Further, the Exchange proposes to make clarifying changes to its Schedule of Fees. In the filing that adopted the incentive plan, the Exchange inadvertently excluded two fee discounts applicable to trading in options on NZD, PZO and SKA. First, for Complex Orders in NZD, PZO and SKA, the Exchange charges a fee only for the leg of the trade consisting of the most contracts. Second, pursuant to a pilot program, transaction fees in all FX Options traded on the Exchange are waived entirely on incremental volume above 5,000 contracts for single-sided orders of at least 5,000 contracts. The Exchange has applied these two fee discounts to trades in NZD, PZO and SKA since these products began trading on the Exchange on August 3, 2009 and now proposes to reflect the applicability of these fee discounts on its Schedule of Fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed rule change will permit additional market makers to join the incentive plan which in turn will generate additional order flow to the Exchange by creating incentives to trade these FX Options as well as defray operational costs for Early Adopter Market Makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

the Act[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–80. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2009–80 and should be submitted on or before November 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–25003 Filed 10–16–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A) [sic].

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60819; File No. SR–NYSEArca–2009–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Replacement Indexes for PowerShares DB Commodity Index Tracking Fund and PowerShares DB Agriculture Fund

October 13, 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 October 8, 2009, NYSE Arca, Inc. (''NYSE Arca'' 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act,[3] the Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to describe a replacement to the indexes underlying the PowerShares DB Commodity Index Tracking Fund and the PowerShares DB Agriculture Fund, which are listed on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

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 PowerShares DB Commodity Index Tracking Fund (''DBC'') and the PowerShares DB Agriculture Fund (''DBA'' and together with DBC, the ''Funds'')[4] are currently listed on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 (''Trust Issued Receipts'').[5] Deutsche Bank AG

[4] *See* Registration Statement on Form S–3 for PowerShares DB Commodity Index Tracking Fund (No. 333–158733, dated April 23, 2009) (''DBC Registration Statement'') and the Post-Effective Amendment No. 1 to Form S–1 for PowerShares DB Agriculture Fund (No. 333–150501, dated April 15, 2009) (''DBA Registration Statement''). In addition, the issuer has filed Current Reports on Forms 8–K with respect to DBC (No. 001–32726, filed Sept. 30, 2009) (''DBC Current Report'') and DBA (No. 001–33238, filed Sept. 30, 2009) (''DBA Current Report'') regarding replacement of the indexes underlying the Funds.

[5] *See* Securities Exchange Act Release No. 58993 (November 21, 2008), 73 FR 72548 (November 28, 2008) (SR–NYSEArca–2008–128) (order approving listing on the Exchange of the Funds) (''NYSE Arca Order''). The Funds were previously traded on the Exchange pursuant to unlisted trading privileges (''UTP''). *See* Securities Exchange Act Release Nos. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR–PCX–2006–22) (order approving UTP trading of DB Commodity Index Tracking Fund); 55453 (March 13, 2007), 72 FR 13333 (March 21, 2007) (SR–NYSEArca–2006–62) (order approving UTP trading of PowerShares DB Agriculture Fund and other PowerShares commodity-based funds). The Funds were originally approved for listing on the American Stock Exchange LLC (the ''Amex'', now known as NYSE Amex LLC). *See* Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR–Amex–2005–59) (approving listing of DB Commodity Index Tracking Fund (now known as PowerShares DB Commodity Index Tracking Fund)) (''Amex DBC Order''); 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR–Amex–2006–76) (approving listing of PowerShares DB Agriculture Fund and other PowerShares commodity-based funds) (''Amex DBA Order''). *See also,* Securities Exchange Act Release No. 53858 (May 24, 2006), 71 FR 31232 (June 1, 2006) (SR–Amex–2006–53) (''Supplemental Amex DBC Filing'', in which the Amex clarified the manner in which the index underlying DBC is maintained by providing that the replacement of expiring futures contracts would be based on

London, the ''Index Sponsor'' for the Funds, has determined to replace the commodities indexes underlying these securities from those previously approved by the Commission in the NYSE Arca Order, Amex DBC Order, and Amex DBA Order (collectively, the ''DBC/DBA Orders'').

With the exception of the description of the replacement indexes underlying DBC and DBA, as described below, the descriptions of the Funds and the Shares provided in the DBC/DBA Orders and the Supplemental Amex DBC Filing, as applicable, remain unchanged. In addition, each of the representations that applied to the current indexes underlying DBC and DBA set forth in the DBC/DBA Orders, as applicable, will continue to apply to the proposed replacement indexes, including, without limitation, with respect to the calculation and dissemination of index and commodity-related information.[6] Further, other representations relating to the listing and trading of shares of DBC and DBA (''DBC Shares'' and ''DBA Shares'', respectively) on the Exchange, including, without limitation, dissemination of certain values, trading rules governing the trading of the DBC Shares and DBA Shares, and surveillance procedures for the DBC Shares and DBA Shares and the underlying commodities and commodity-related derivatives, will continue to apply. As a result of the proposed change, the Exchange represents that the Funds satisfy the requirements of Rule 8.200, Commentary .02, and therefore qualify for continued listing on the Exchange. In addition, the Funds will continue to satisfy Rule 10A–3 under the Act.

PowerShares DB Commodity Index Tracking Fund

The investment objective of DBC and the Master Fund is to seek to track changes, whether positive or negative, in the level of the Deutsche Bank Liquid Commodity Index Optimum Yield—Excess Return™ (''DBLCI–OYER''), less the expenses of the operations of DBC and the DBC Master Fund. A description of the DBLCI–OYER, commodity futures contracts and related options, operation of DBC, creation and redemption procedures, and the Shares is set forth in the NYSE Arca Order, the Amex DBC Order, and the Supplemental Amex DBC Filing.[7]

As described in the DBC Current Report (''DBC Index Description''), the Index Sponsor has made the determination that changes in regulatory circumstances (the ''DBC Changes'') affecting the DBLCI–OYER have arisen, and, in the view of the Index Sponsor, such DBC Changes necessitate the replacement of the DBLCI–OYER.[8]

Because of such DBC Changes, the Index Sponsor has determined that the replacement index should include additional commodities that are not currently part of the DBLCI–OYER in order to permit the replacement index to reflect, broadly and in proportion to historical levels, the world's production and supplies of certain commodities. The DBC Index Description will reflect the replacement of the DBLCI–OYER with the Deutsche Bank Liquid Commodity Index–Optimum Yield Diversified Excess Return™ (''DBLCI–OY Diversified ER'').

According to the DBC Index Description, the DBLCI–OY Diversified ER is intended to reflect, broadly and in proportion to historical levels, the world's production and supplies of certain commodities. The commodities of the DBLCI–OY Diversified ER are (1) Light, Sweet Crude Oil (WTI), (2) Heating Oil, (3) RBOB Gasoline, (4) Natural Gas, (5) Brent Crude, (6) Gold, (7) Silver, (8) Aluminum, (9) Zinc, (10) Copper Grade A, (11) Corn, (12) Wheat, (13) Soybeans, and (14) Sugar.[9] Each commodity is represented in the DBLCI–OY Diversified ER™ as an index with respect to that specific commodity (''Single Commodity Index''). Each Single Commodity Index is assigned a weight (the ''DBC Index Base Weight'') which is intended to reflect the world's production and supplies of each such index commodity.

According to the DBC Index Description, the DBLCI–OY Diversified ER has been calculated back to a base date (the ''DBC Base Date'') of September 3, 1997. On the DBC Base Date, the closing level of the DBLCI–OY Diversified ER™ was 100.

Single Commodity Index	DBC Index Base Weight (%)	Exchange [10]
Light, Sweet Crude Oil (WTI).	12.375	NYMEX
Heating Oil	12.375	NYMEX
RBOB Gasoline.	12.375	NYMEX
Natural Gas	5.500	NYMEX
Brent Crude	12.375	ICE–UK
Gold	8.000	COMEX
Silver	2.000	COMEX
Aluminum	4.167	LME
Zinc	4.167	LME
Copper Grade A.	4.167	LME
Corn	5.625	CBOT
Wheat	5.625	CBOT
Soybeans	5.625	CBOT
Sugar	5.625	ICE–US

According to the DBC Current Report, each Single Commodity Index of the DBLCI–OY Diversified ER™ employs a rules-based approach when it ''rolls'' from one futures contract to another for each commodity. Rather than select a new futures contract based on a predetermined schedule (e.g., monthly), each Single Commodity Index rolls to the futures contract which generates the

''Optimum Yield'' roll rules for such index, as described in SR–Amex–2006–53).

[6] The Index Sponsor has in place procedures to prevent the improper sharing of information between different affiliates and departments. Specifically, an information barrier exists between the personnel within the Index Sponsor that calculate and reconstitute the replacement indexes (the Calculation Group) and other Deutsche Bank personnel, including but not limited to the Managing Owner, sales and trading, external or internal fund managers, and bank personnel who are involved in hedging the bank's exposure to instruments linked to the replacement indexes, in order to prevent the improper sharing of information relating to the recomposition of such indexes. The replacement indexes are not calculated by a broker-dealer.

[7] E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Daniel Gien, Staff Attorney, Division of Trading and Markets, Commission, dated Oct. 13, 2009.

[8] The action by the Funds to replace the commodity indexes currently underlying the Funds is in response to an announcement by the Commodity Futures Trading Commission (''CFTC'') in Release 5695–09 (August 19, 2009) (''CFTC Release''), that the CFTC is withdrawing two no-action letters that provided relief from federal agricultural speculative positions limits set forth in CFTC regulations (17 CFR 150.2). The CFTC Release stated, in part, as follows: ''In CFTC Letter 06–09 (May 5, 2006), the agency's Division of Market Oversight (DMO) granted no-action relief to DB Commodity Services LLC, a commodity pool operator (CPO) and commodity trading advisor (CTA), permitting the DB Commodity Index Tracking Master Fund to take positions in corn and wheat futures that exceed federal speculative position limits set forth in CFTC Regulation 150.2. Subsequently, in CFTC Letter 06–19 (September 6, 2006), DMO granted similar no-action relief to a CPO/CTA employing a proprietary commodity investment strategy that includes positions in Chicago Board of Trade corn, soybeans and wheat futures contracts. Among other things, DMO's no-action position in both cases stated that any change in circumstances or conditions could result in a different conclusion. DMO has previously stated that the trading strategies employed by these entities would not qualify for a bona fide hedge exemption under the Commission's regulations.''

[9] The DBLCI–OY Diversified ER includes all of the commodities in the previous DBLCI–OYER, and, in addition to such commodities, includes Brent Crude, RBOB Gasoline, Natural Gas, Silver, Zinc, Copper Grade A, Soybeans, and Sugar.

[10] The referenced exchanges with respect to the commodities for DBC and DBA, as applicable, are as follows: NYMEX (New York Mercantile Exchange); ICE–UK (ICE Futures Europe); COMEX (Commodity Exchange Inc.); LME (The London Metal Exchange Limited); CBOT (Chicago Board of Trade); CME (Chicago Mercantile Exchange); ICE–US (ICE Futures U.S.), Inc.; KCB (Kansas City Board of Trade).

maximum ''implied roll yield.'' The futures contract having a delivery month within the next thirteen months which generates the highest implied roll yield will be included in each Single Commodity Index.

DBLCI–OY Diversified ER™ is calculated in U.S. dollars on both an excess return (unfunded) and total return (funded) index levels.

PowerShares DB Agriculture Fund

DBA is designed to track the Deutsche Bank Liquid Commodity Index—Optimum Yield Agriculture Excess Return™ (''DBLCI–OY Agriculture ER''), which is intended to reflect the agricultural sector. A description of the DBLCI–OY Agriculture ER, commodity futures contracts and related options, operation of DBA, creation and redemption procedures, and the DBA Shares is set forth in the NYSE Arca Order and the Amex DBA Order.

As is the case with respect to DBC, as discussed above, the Index Sponsor has made the determination that changes in regulatory circumstances (''DBA Changes'') affecting the DBLCI–OY Agriculture ER have arisen, and, in the view of the Index Sponsor, such DBA Changes necessitate replacement of the DBLCI–OY Agriculture ER.[11]

As described in the DBA Current Report (''DBA Index Description''),[12] because of the DBA Changes, the Index Sponsor has determined that the replacement index should include additional commodities that are not currently part of the DBLCI–OY Agriculture ER in order to permit the replacement index to reflect the performance of the agricultural sector. The DBA Index Description will reflect the replacement of the DBLCI–OY Agriculture ER with the Deutsche Bank Liquid Commodity Index Diversified Agriculture Excess Return™ (''DBLCI Diversified Agriculture ER'').

The DBLCI Diversified Agriculture ER is intended to reflect the performance of the agricultural commodities sector and is calculated on an excess return, or unfunded basis. The DBLCI Diversified Agriculture ER methodology provides that the replacement of expiring futures contracts in part would be based on ''Optimum Yield'' roll rules for such index, as described in the DBA Current Report. In addition, the DBLCI Diversified Agriculture ER, in part, is rolled on a non-Optimum Yield basis. Each commodity in the DBLCI Diversified Agriculture ER is assigned a weight (the ''DBA Index Base Weight'') which is intended to reflect the proportion of such commodity relative to such index.[13]

The DBLCI Diversified Agriculture ER has been calculated back to a base date of January 18, 1989 (the ''Base Date''). On the Base Date, the closing level of the DBLCI Diversified Agriculture ER™ was 100.

Single Commodity Index [14]	DBA Index Base Weight (%)	Exchange
Corn	12.50	CBOT
Soybeans	12.50	CBOT
Wheat	6.25	CBOT
Kansas Wheat	6.25	KCB
Sugar	12.50	ICE–US
Cocoa	11.11	ICE–US
Coffee	11.11	ICE–US
Cotton	2.78	ICE–US
Live Cattle	12.50	CME
Feeder Cattle	4.17	CME
Lean Hogs	8.33	CME

DBLCI Diversified Agriculture ER is calculated in U.S. dollars on both an excess return (unfunded) and total return (funded) index levels.

Dissemination of Information About the Underlying Futures Contracts

The closing prices and daily settlement prices for the futures contracts held by the applicable Master Funds are publicly available on the Web sites of the futures exchanges trading the particular contracts. The particular futures exchange for each futures contract in the DBLCI–OY Diversified ER, with Web site information, is as follows: (i) Aluminum, zinc and copper—LME at *www.lme.com*; (ii) corn, wheat and soybeans—CBOT at *www.cmegroup.com*; (iii) Brent Crude—ICE–UK at *www.theice.com*; (iv) sugar—ICE–US at *www.theice.com*; and (v) light, sweet crude oil (WTI), heating oil, RBOB gasoline, natural gas, gold and silver—NYMEX at *www.nymex.com*.

The particular futures exchange for each futures contract in the DBLCI Diversified Agriculture ER with Web site information is as follows: (i) Corn, soybeans and wheat—CBOT at *www.cmegroup.com*; (ii) Kansas wheat—KCB at *www.kcbt.com*; (iii) sugar, coffee, cocoa and cotton—ICE–US at *www.theice.com*; and (iv) live cattle, feeder cattle and lean hogs—CME at *www.cmegroup.com*.

The Exchange will issue an Information Bulletin regarding the replacement indexes for DBC and DBA in connection with trading of DBC and DBA based on such indexes.

All terms relating to the Funds that are referred to, but not defined, in this proposed rule change are defined in the DBC Registration Statement, the DBC Current Report, the DBA Registration Statement, and the DBA Current Report, as applicable.

Surveillance

The Exchange currently has in place an Information Sharing Agreement with the ICE Futures U.S., ICE Futures Europe, LME, and KCB, for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Indexes. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG, including CME, CBOT and NYMEX.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [16] in general and Section 6(b)(5) of the Act [17] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change accommodates an expansion of the commodities included in the indexes underlying the Funds, which has been undertaken in response to action by the CFTC referred to above,[18] to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.200 are intended to protect investors and the public interest.

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.

[11] *See* note 8, *supra*.

[12] *See* note 4, *supra*.

[13] The DBLCI Diversified Agriculture ER includes all of the commodities in the previous DBLCI–OY Agriculture ER, and, in addition to such commodities, includes Kansas Wheat, Cocoa, Coffee, Cotton, Live Cattle, Feeder Cattle, and Lean Hogs.

[14] Futures contracts on Corn, Soybeans, Wheat, Kansas Wheat, and Sugar are rolled on an Optimum Yield basis. Futures contracts on Cocoa, Coffee, Cotton, Live Cattle, Feeder Cattle and Lean Hogs are rolled on a Non-Optimum Yield basis.

[15] For a list of the current members of ISG, *see www.isgportal.org*.

[16] 15 U.S.C. 78s(b).

[17] 15 U.S.C. 78s(b)(5).

[18] *See* note 8, *supra*.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–89. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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–NYSEArca–2009–89 and should be submitted on or before November 9, 2009.

V. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[20] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission notes that the new replacement indexes, DBLCI–OY Diversified ER and DBLCI Diversfied Agriculture ER, reflect more commodity components and are more diversified than the current indexes underlying DBC and DBA, respectively.[21] In addition, with the exception of the description of the replacement indexes underlying DBC and DBA, the Commission notes that the descriptions of the Funds and the Shares provided in the DBC/DBA Orders and the Supplemental Amex DBC Filing, as applicable, remain unchanged. The Commission further notes that each of the representations that applied to the current indexes underlying DBC and DBA set forth in the DBC/DBA Orders, as applicable, will continue to apply to the proposed replacement indexes, including, without limitation, with respect to the calculation and dissemination of index and commodity-related information. In addition, other representations relating to the listing and trading of the DBC Shares and DBA Shares on the Exchange, including, without limitation, dissemination of certain values, trading rules governing the trading of the DBC Shares and DBA Shares, and surveillance procedures for the DBC Shares and DBA Shares and the underlying commodities and commodity-related derivatives, will continue to apply. As a result of the proposed change, the Exchange represents that the Funds will continue to satisfy the requirements of Commentary .02 to NYSE Arca Equities Rule 8.200 and therefore qualify for listing on the Exchange. This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the 30th day after publication of notice in the **Federal Register**. The Commission notes that the DBC Shares and DBA Shares are currently listed and trading on the Exchange based on the DBLCI–OYER and the DBLCI–OY Agriculture ER, respectively. The Commission believes that the Exchange's proposal to replace such current indexes with the DBLCI–OY Diversified ER and DBLCI Diversified Agriculture ER, which are more broad-based than the current indexes, does not appear to present any novel issues or significant regulatory concerns. The Commission notes that, with the exception of the description of the replacement indexes underlying DBC and DBA, the descriptions of the Funds and the Shares, as provided in the DBC/DBA Orders and the Supplemental Amex DBC Filing, as applicable, and the representations previously made by the Exchange relating to the indexes and the trading of the DBC Shares and DBA Shares on the Exchange will continue to apply. The Commission also notes that the Exchange's proposal represents action in response to the CFTC Release. The Commission believes that accelerating approval of this proposal should benefit investors and the marketplace by providing, without undue delay, for certain commodity-based products

[19] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] *See supra* notes 9 and 13.

[22] 15 U.S.C. 78s(b)(2).

currently listed and trading on an exchange to be based on an expanded and more diversified set of commodity components.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NYSEArca–2009–89) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–25109 Filed 10–16–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60809; File No. SR–NYSE–2009–104]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 123C(8)(a)(1) To Extend the Operation of the Extreme Order Imbalances Pilot

October 9, 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 October 5, 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 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 123C(8)(a)(1) to extend the operation of the pilot to temporarily suspend certain NYSE requirements relating to the closing of securities on the Exchange until the earlier of Securities and Exchange Commission approval to make such pilot permanent or 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 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

NYSE Rule 123C(8)(a)(1) allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The rule has operated on a pilot basis since April 2009 (''Extreme Order Imbalances Pilot'' or Pilot).[4] Through this filing, NYSE proposes to extend the Pilot until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or December 31, 2009.[5]

Background

Pursuant to NYSE Rule 123C(8)(a)(1), the Exchange may suspend NYSE Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.[6] The provisions of NYSE Rule 123C(8)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often a Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4:00 p.m.

The Extreme Order Imbalance Pilot is scheduled to end operation on October 13, 2009. The Exchange is currently preparing a rule filing seeking permission to make the provisions of the Pilot permanent with certain modifications but does not expect that filing to be completed and approved by the Commission before October 13, 2009.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

As the Exchange has previously stated, invocation of the provisions of NYSE Rule 123C(8) to attract offsetting interest is intended to be used for extreme and likely rare circumstances where there exists such a large imbalance at the close that a DMM is unable to close the security without significantly dislocating the price of the security. This is evidenced by the fact that during the course of the Pilot, the Exchange invoked the provisions of NYSE Rule 123C(8), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Rule 123C(8)(a)(1), in only one security on August 31, 2009.

In addition, during the operation of the Pilot, the Exchange determined that it would not be as onerous as previously believed to modify Exchange systems to accept orders electronically after 4 p.m. The Exchange anticipates that such system modifications could be completed by December 31, 2009.

Given the above, the Exchange believes that provisions governing the Extreme Order Imbalance Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the Pilot in order to allow the Exchange to formally submit a filing to the Commission to convert the provisions governing the Pilot to permanent rules and complete the technological modifications required to accept orders electronically after 4 p.m. The Exchange therefore request and [sic] extension from the current expiration date of October 13, 2009, until the earlier of Securities and Exchange

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[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities and Exchange Act Release No. 597755 [sic] (April 13, 2009) 74 FR 18009 (April 20, 2009)(SR–NYSE–2009–15).

[5] The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. *See* SR–NYSE–Amex–2009–70.

[6] *See* NYSE Rule 123C(8)(a)(1).

Commission approval to make such Pilot permanent or December 31, 2009.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to: (i) Prepare and submit a filing to make the provisions governing the Extreme Order Imbalance Pilot permanent; (ii) have such filing complete public notice and comment period; and (iii) complete the 19b–4 approval process. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

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)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder. Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[11] which would make the rule change operative immediately. The Exchange believes that continuation of the Pilot does not burden competition and would operate to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption while the Exchange works towards submitting a separate proposal to make the Pilot permanent. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[12]

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.[13]

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–2009–104 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–2009–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–104 and should be submitted on or before November 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–25111 Filed 10–16–09; 8:45 am]

BILLING CODE 8011–01–P

[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).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60812; File No. SR–NYSE–2009–102]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 14 To Be Consistent With the New System Capability To Receive Orders for Execution on the Exchange Containing Settlement Instructions of ''Cash,'' ''Next Day'' and ''Seller's Option'' Directly to a Floor Broker's Hand-Held Device

October 9, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 1, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 14 (''Non-Regular Way Settlement Instructions for Orders'') to be consistent with the new system capability to receive orders for execution on the Exchange containing settlement instructions of ''cash,'' ''next day'' and ''seller's option'' directly to a Floor broker's hand-held device. 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 14 (''Non-Regular Way Settlement Instructions for Orders'') to be consistent with its new system capability to receive orders containing settlement instructions of ''cash,'' ''next day'' and ''seller's option'' (collectively referred to herein as ''non-regular way settlement''[4]) directly to a Floor broker's hand-held device.[5]

Currently, Designated Market Maker units do not have order handling responsibility for orders containing non-regular way settlement instructions. Moreover, Exchange systems that route orders to the Display Book do not accept orders containing non-regular way instructions. Routing orders directly to a Floor broker booth location via the Broker Booth Support System (''BBSS'') for representation on the Floor is the only acceptable way for orders with non-regular way settlement instructions to be transmitted to the Exchange.

Pursuant to NYSE Rule 14 customers that seek to execute orders containing non-regular way settlement instructions must directly transmit those orders via BBSS directly to a Floor broker for representation in the trading crowd because at the time the Exchange established this capability, BBSS was the only Exchange system capable of accepting such orders. As a result customers are currently prohibited from transmitting orders containing non-regular settlement instructions directly to a Floor broker's hand-held device.

The Exchange has currently enhanced its systems to enable hand-held devices to receive and process orders containing non-regular way settlement instructions.[6] As such, through this filing the Exchange seeks to provide its customers that seek to execute orders containing non-regular way settlement instructions with an additional systemic option for transmitting such orders to a Floor broker for representation on the Floor. The Exchange therefore proposes to amend NYSE Rule 14(a)(ii) to remove the words ''booth system'' and permit customers to transmit orders containing non-regular way settlement instructions to a Floor broker via either BBSS or a Floor broker's hand-held device.

The Exchange believes that the instant proposal better facilitates the needs of its customers to submit orders containing instructions for non-regular way settlement and maintains effective representation of such customer orders in the Exchange's current market.

The Exchange will commence installation of the new technology in Floor broker hand-held devices on or about October 5, 2009, with expected completion no later than October 30, 2009.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') [sic] for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The instant filing accomplishes these goals by providing its customers with an additional method to enter orders containing non-regular way settlement instructions, without changing the ability of such orders to be represented at the point of sale in the Exchange's auction market.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Orders indicating cash settlement instructions require delivery of the securities on the same day as the trade date. Next day settlement instructions require delivery of the securities on the first business day following the trade date. Orders that have settlement instructions of seller's option afford the seller the right to deliver the security or bond at any time within a specified period, ranging from not less than two business days to not more than sixty days for securities and not less than two business days and no more than sixty days for U.S. government securities.

Odd-lot orders containing non-regular way settlement instructions are not permitted.

[5] The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex LLC. *See* SR–NYSE Amex–2009–68.

[6] Orders sent directly to the hand-held device, including those containing non-regular way settlement instructions, are systemically transmitted to the ''Front End Systemic Capture'' (''FESC'') consistent with the requirements of NYSE Rule 123, which requires floor brokers to enter the details of an order, including any modification or cancellation, into a system which electronically timestamps the time of entry prior to representing or executing that order on the Floor.

[7] 15 U.S.C. 78f(b)(5).

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 proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3)[8] and Rule 19b–4(f)(5).[9] This proposed rule change effects a change in an existing order entry or trading system of a self-regulatory organization that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition, and (C) does not have the effect of limiting the access to or availability of the system. The Exchange believes that the instant proposal is consistent with these provisions in that the enhancements to Exchange systems allow Floor broker hand-held devices to receive and process orders containing non-regular way instruction and do not change the operation of the rule in any other way.

At any time within 60 days of the filing of such 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–2009–102 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–2009–102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–102 and should be submitted on or before November 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–25113 Filed 10–16–09; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60814; File No. SR–BX–2009–063]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strike Price Intervals of $0.50 for Options on Stocks Trading at or Below $3.00 on the Boston Options Exchange Facility

October 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on, October 6, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Supplementary Material to Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') in order to establish strike price intervals of $0.50, beginning at $1, for certain option classes whose underlying security closed at or below $3 in its primary market on the previous trading day. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the ability of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

investors to hedge risks associated with stocks trading at or under $3. Currently, Supplementary Material .01 to Chapter IV, Section 6 of the BOX Rules provides that the interval of strike prices of series of options on individual stocks may be $2.50 or greater where the strike price is $25 or less. Additionally, Supplementary Material .02 to Chapter IV, Section 6 of the BOX Rules allows BOX to establish $1 strike price intervals (the ''$1 Strike Price Program'') on options classes overlying no more than fifty-five individual stocks designated by BOX. In order to be eligible for selection into the $1 Strike Price Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the $1 Strike Price Program, BOX may list strike prices at $1 intervals from $1 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. BOX may also list $1 strikes on any other option class designated by another securities exchange that employs a similar $1 Strike Price Program its own rules.[5] BOX is restricted from listing any series that would result in strike prices being within $0.50 of a strike price set pursuant to Supplementary Material .01 to Chapter IV, Section 6 at intervals of $2.50.

The Exchange is now proposing to establish strike prices of $1, $1.50, $2, $2.50, $3 and $3.50 for certain stocks that trade at or under $3.00.[6] The listing of these strike prices will be limited to options classes whose underlying security closed at or below $3 in its primary market on the previous trading day, and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of $0.50 strike prices would be limited to options classes overlying no more than 5 individual stocks (the ''$0.50 Strike Price Program'') as specifically designated by BOX. BOX would also be able to list $0.50 strike prices on any other option classes if those classes were specifically designated by other securities exchanges that employed a similar $0.50 Strike Price Program under their respective rules.

Currently, the Exchange may list options on stocks trading at $3 at strike prices of $1, $2, $3, $4, $5, $6, $7 and $8 if they are designated to participate in the $1 Strike Price Program.[7] If these stocks have not been selected for the Exchange's $1 Strike Price Program, the Exchange may list strike prices of $2.50, $5, $7.50 and so forth as provided in Supplementary Material .01 to Chapter IV, Section 6 of the BOX Rules, but not strike prices of $1, $2, $3, $4, $6, $7 and $8.[8]

The Exchange is now proposing to add Supplementary Material .06 to Chapter IV, Section 6 of the BOX Rules to list strike prices on options on a number of qualifying stocks that trade at or under $3.00, not simply those stocks also participating in the $1 Strike Price Program, in finer intervals of $0.50, beginning at $1 up to $3.50. Thus, a qualifying stock trading at $3 would have option strike prices established not just at $2.50, $5.00, $7.50 and so forth (for stocks not in the $1 Strike Price Program) or just at $1, $2, $3, $4, $5, $6, $7 and $8 (for stocks designated to participate in the $1 Strike Price Program), but rather at strike prices established at $1, $1.50, $2, $2.50, $3 and $3.50.[9]

The Exchange believes that current market conditions demonstrate the appropriateness of the new strike prices. Recently the number of securities trading below $3.00 has increased dramatically.[10] Unless the underlying stock has been selected for the $1 Strike Price Program, there is only one possible in-the-money call (at $2.50) to be traded if an underlying stock trades at $3.00. Similarly, unless the underlying stock has been selected for the $1 Strike Price Program, only one out-of-the-money strike price choice within 100% of a stock price of $3 is available if an investor wants to purchase out-of-the money calls. Stated otherwise, a purchaser would need over a 100% move in the underlying stock price in order to have a call option at any strike price other than the $5 strike price become in-the-money. If the stock is selected for the $1 Strike Price Program, the available strike price choices are somewhat broader, but are still greatly limited by the proximity of the $3 stock price to zero, and the very large percent gain or loss in the underlying stock price, relative to a higher priced stock, that would be required in order for strikes set at $1 or away from the stock price to become in-the-money and serve their intended hedging purpose.

As a practical matter, a low-priced stock by its very nature requires narrow strike price intervals in order for investors to have any real ability to hedge the risks associated with such a security or execute other related options trading strategies. The current restriction on strike price intervals, which prohibits intervals of less than $2.50 (or $1 for stocks in the $1 Strike Price Program) for options on stocks trading at or below $3, could have a negative affect on investors. The Exchange believes that the proposed $0.50 strike price intervals would provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity option positions that are better tailored to meet their investment objectives. The proposed new strike prices would enable investors to more closely tailor their investment strategies and decisions to the movement of the underlying security. As the price of stocks decline below $3 or even $2, the availability of options with strike prices at intervals of $0.50 could provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

With regard to the impact on system capacity, BOX has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

[5] The Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the $1 Strike Price Program.

[6] The Exchange recently amended Chapter IV, Section 4 of the BOX Rules. The amendment eliminated the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than $3. The Exchange explained in that proposed rule change that the market price for a large number of securities has fallen below $3 in the current volatile market environment. *See* Securities Exchange Act Release No. 59419 (February 19, 2009), 74 FR 8596 (February 25, 2009) (SR–BX–2009–011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the $3 Underlying Price Requirement for Continued Listing and Listing of Additional Series on the Boston Options Exchange Facility).

[7] Additionally, market participants may be able to trade $2.50 strikes on the same option at another exchange, if that exchange has elected not to select the stock for participation in its own similar $1 Strike Price Program.

[8] Again, market participants may also be able to trade the option at $1 strike price intervals on other exchanges, if those exchanges have selected the stock for participation in their own similar $1 Strike Price Program.

[9] The option on the qualifying stock could also have strike prices set at $5, $7.50 and so forth at $2.50 intervals (pursuant to Supplementary Material .01 to Chapter IV, Section 6 of the BOX Rules) or, if it has been selected for the $1 Strike Price Program, at $4, $5, $6, $7 and $8.

[10] As of July 31, 2009, stocks trading at or below $3 include E*Trade Financial Corporation, Ambac Financial Group, Inc., Alcatel-Lucent, Federal Home Loan Mortgage Corporation (Freddie Mac) and Federal National Mortgage Association (Fannie Mae). A number of these stocks are widely held and actively traded equities, and the options overlying these stocks also trade actively on BOX.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by expanding the ability of investors to hedge risks associated with stocks trading at or under $3. The proposal should create greater trading and hedging opportunities and flexibility and provide customers with the ability to more closely tailor investment strategies to the price movement of the underlying stocks, trading in many of which is highly liquid.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change 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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete effectively with other options exchanges offering a similar $.50 Strike Program. The Commission recently approved SR–Phlx–2009–65,[15] and therefore finds that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will encourage fair competition among the exchanges. Therefore, the Commission designates the proposal operative upon filing.[16]

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–BX–2009–063 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–BX–2009–063. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–BX–2009–063 and should be submitted on or before November 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–25114 Filed 10–16–09; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[15] *See* Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009) (SR–Phlx–2009–65) (order approving a $0.50 strike program substantially the same as the $0.50 Strike Program proposed by the Exchange).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60811; File No. SR–NYSEAmex–2009–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 14 To Be Consistent With the New System Capability To Receive Orders for Execution on the Exchange Containing Settlement Instructions of ''Cash,'' ''Next Day'' and ''Seller's Option'' Directly to a Floor Broker's Hand-Held Device

October 9, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on October 1, 2009, NYSE Amex LLC (''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 14 (''Non-Regular Way Settlement Instructions for Orders'') to be consistent with the new system capability to receive orders for execution on the Exchange containing settlement instructions of ''cash,'' ''next day'' and ''seller's option'' directly to a Floor broker's hand-held device. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *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 Equities Rule 14 (''Non-Regular Way Settlement Instructions for Orders'') to be consistent with its new system capability to receive orders containing settlement instructions of ''cash,'' ''next day'' and ''seller's option'' (collectively referred to herein as ''non-regular way settlement'' [4]) directly to a Floor broker's hand-held device.[5]

Currently, Designated Market Maker units do not have order handling responsibility for orders containing non-regular way settlement instructions. Moreover, Exchange systems that route orders to the Display Book do not accept orders containing non-regular way instructions. Routing orders directly to a Floor broker booth location via the Broker Booth Support System (''BBSS'') for representation on the Floor is the only acceptable way for orders with non-regular way settlement instructions to be transmitted to the Exchange.

Pursuant to NYSE Amex Equities Rule 14 customers that seek to execute orders containing non-regular way settlement instructions must directly transmit those orders via BBSS directly to a Floor broker for representation in the trading crowd because at the time the Exchange established this capability, BBSS was the only Exchange system capable of accepting such orders. As a result customers are currently prohibited from transmitting orders containing non-regular settlement instructions directly to a Floor broker's hand-held device.

The Exchange has currently enhanced its systems to enable hand-held devices to receive and process orders containing non-regular way settlement instructions.[6] As such, through this filing the Exchange seeks to provide its customers that seek to execute orders containing non-regular way settlement instructions with an additional systemic option for transmitting such orders to a Floor broker for representation on the Floor. The Exchange therefore proposes to amend NYSE Amex Equities Rule 14(a)(ii) to remove the words ''booth system'' and permit customers to transmit orders containing non-regular way settlement instructions to a Floor broker via either BBSS or a Floor broker's hand-held device.

The Exchange believes that the instant proposal better facilitates the needs of its customers to submit orders containing instructions for non-regular way settlement and maintains effective representation of such customer orders in the Exchange's current market.

The Exchange will commence installation of the new technology in Floor broker hand-held devices on or about October 5, 2009, with expected completion no later than October 30, 2009.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') [sic] for this proposed rule change is the requirement under Section 6(b)(5) [7] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The instant filing accomplishes these goals by providing its customers with an additional method to enter orders containing non-regular way settlement instructions, without changing the ability of such orders to be represented at the point of sale in the Exchange's auction market.

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 proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) [8] and Rule 19b–4(f)(5).[9] This proposed rule change effects a change in an existing order entry or trading system of a self-regulatory organization that: (A) Does not significantly affect the

[4] Orders indicating cash settlement instructions require delivery of the securities on the same day as the trade date. Next day settlement instructions require delivery of the securities on the first business day following the trade date. Orders that have settlement instructions of seller's option afford the seller the right to deliver the security or bond at any time within a specified period, ranging from not less than two business days to not more than sixty days for securities and not less than two business days and no more than sixty days for U.S. government securities.

Odd-lot orders containing non-regular way settlement instructions are not permitted.

[5] The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. *See* SR–NYSE–2009–102.

[6] Orders sent directly to the hand-held device, including those containing non-regular way settlement instructions, are systemically transmitted to the ''Front End Systemic Capture'' (''FESC'') consistent with the requirements of NYSE Amex Equities Rule 123, which requires floor brokers to enter the details of an order, including any modification or cancellation, into a system which electronically timestamps the time of entry prior to representing or executing that order on the Floor.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(5).

protection of investors or the public interest; (B) does not impose any significant burden on competition, and (C) does not have the effect of limiting the access to or availability of the system. The Exchange believes that the instant proposal is consistent with these provisions in that the enhancements to Exchange systems allow Floor broker hand-held devices to receive and process orders containing non-regular way instruction and do not change the operation of the rule in any other way.

At any time within 60 days of the filing of such 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–2009–68 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–2009–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–68 and should be submitted on or before November 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–25112 Filed 10–16–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60808; File No. SR–NYSEAmex–2009–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 123C(8)(a)(1) To Extend the Operation of the Extreme Order Imbalances Pilot

October 9, 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 October 5, 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 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 Amex Equities Rule 123C(8)(a)(1) to extend the operation of the pilot to temporarily suspend certain NYSE requirements relating to the closing of securities on the Exchange until the earlier of Securities and Exchange Commission approval to make such pilot permanent or 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 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

NYSE Amex Equities Rule 123C(8)(a)(1) allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The rule has operated on a pilot basis since April 2009 (''Extreme Order Imbalances Pilot'' or Pilot).[4] Through this filing, NYSE Amex proposes to extend the Pilot until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or December 31, 2009.[5]

Background

Pursuant to NYSE Amex Equities Rule 123C(8)(a)(1), the Exchange may suspend NYSE Amex Equities Rules 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.[6] The provisions of NYSE Amex Equities Rule 123C(8)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities and Exchange Act Release No. 597755 [sic] (April 13, 2009) 74 FR 18009 (April 20, 2009) (SR–NYSEALTR–2009–15).

[5] The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. *See* SR–NYSE–2009–104.

[6] *See* NYSE Amex Equities Rule 123C(8)(a)(1).

often a Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m.

The Extreme Order Imbalance Pilot is scheduled to end operation on October 13, 2009. The Exchange is currently preparing a rule filing seeking permission to make the provisions of the Pilot permanent with certain modifications but does not expect that filing to be completed and approved by the Commission before October 13, 2009.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

As the Exchange has previously stated, invocation of the provisions NYSE Amex Equities Rule 123C(8) to attract offsetting interest is intended to be used for extreme, and likely rare circumstances where there exists such a large imbalance at the close that a DMM is unable to close the security without significantly dislocating the price of the security. This is evidenced by the fact that during the course of the Pilot, the Exchange invoked the provisions of NYSE Amex Equities Rule 123C(8), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Amex Equities Rule 123C(8)(a)(1), in only two securities on June 26, 2009, the date of the annual rebalancing of Russell Indexes.

In addition, during the operation of the Pilot, the Exchange determined that it would not be as onerous, as previously believed, to modify Exchange systems to accept orders electronically after 4 p.m. The Exchange anticipates that such system modifications could be completed by December 31, 2009.

Given the above, the Exchange believes that provisions governing the Extreme Order Imbalance Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the Pilot in order to allow the Exchange to formally submit a filing to the Commission to convert the provisions governing the Pilot to permanent rules and complete the technological modifications required to accept orders electronically after 4 p.m. The Exchange therefore request and [sic] extension from the current expiration date of October 13, 2009, until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or December 31, 2009.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to: (i) Prepare and submit a filing to make the provisions governing the Extreme Order Imbalance Pilot permanent; (ii) have such filing complete public notice and comment period; and (iii) complete the 19b–4 approval process. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

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)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder. Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[11] which would make the rule change operative immediately. The Exchange believes that continuation of the Pilot does not burden competition and would operate to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption while the Exchange works towards submitting a separate proposal to make the Pilot permanent. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[12]

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.[13]

[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).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE Amex has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(3)(C).

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–2009–70 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–2009–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–70 and should be submitted on or before November 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–25110 Filed 10–16–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6787]

30-Day Notice of Proposed Information Collection: Form DS–3097, Exchange Visitor Program Annual Report, OMB Control Number 1405–0151

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Exchange Visitor Program Annual Report.
- *OMB Control Number:* 1405–0151.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Educational and Cultural Affairs, Office of Designation, ECA/EC/D/PS.
- *Form Number:* Form DS–3097.
- *Respondents:* designated J–1 program sponsors.
- *Estimated Number of Respondents:* 1460.
- *Estimated Number of Responses:* 1460 annually.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 2920 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from October 19, 2009.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchanges, Department of State, 2200 C Street, NW., 5th Floor, Washington, DC 20522–0505, who may be reached on (202) 632–6090, fax at 202–632–2701 or e-mail at *JExchanges@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

Annual reports from designated program sponsors assist the Department in oversight and administration of the J–1 visa program. The reports provide statistical data on the number of exchange participants an organization sponsored per category. Program sponsors include government agencies, academic institutions, not-for-profit and for-profit organizations.

Methodology

Annual reports are run through the Student and Exchange Visitor Information System (SEVIS) and then printed and sent to the Department. The Department allows sponsors to submit annual reports by mail or fax at this time. There are measures being taken to allow sponsors to submit the reports electronically through SEVIS in the future.

Dated: October 6, 2009.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchanges, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. E9–24945 Filed 10–16–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6788]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Lost World of Old Europe: The Danube Valley 5000–3500BC''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: ''The Lost World of Old Europe: The Danube Valley 5000–3500BC,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Institute for the Study of the Ancient World, New York University, New York, NY, from on or about November 11, 2009, until on or about April 25, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6467). The address is U.S. Department of State, L/PD, SA–5, 2200 C Street, NW., Suite 5H03, Washington, DC 20522–0505.

Dated: October 9, 2009.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9–24950 Filed 10–16–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6789]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Origins of El Greco: Icon Painting in Venetian Crete''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: ''The Origins of El Greco: Icon Painting in Venetian Crete,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Onassis Cultural Center, New York, NY, from on or about November 16, 2009, until on or about February 27, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The address is U.S. Department of State, L/PD, SA–5, 2200 C Street, NW., Suite 5H03, Washington, DC 20522–0505.

Dated: October 9, 2009.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9–24952 Filed 10–16–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6790]

Suggestions for Updated 2009–2011 Plan of Action for Working Group on Environmental Cooperation Established Pursuant to the United States—Morocco Joint Statement on Environmental Cooperation

ACTION: Notice and request for comments.

SUMMARY: The Department of State is soliciting ideas and suggestions for environmental cooperation projects between the United States and Morocco. The United States and Morocco are in the process of developing an updated 2009–2011 Plan of Action pursuant to the United States-Morocco Joint Statement on Environmental Cooperation issued in 2004. The Joint Statement outlines broad areas of environmental cooperation to assist Morocco in complying with its obligations under the United States-Morocco Free Trade Agreement. It is envisioned that the 2009–2011 Plan of Action will focus on the following themes: (1) Institutional and policy strengthening for effective implementation and enforcement of environmental laws, (2) biodiversity conservation and improved management of protected areas, and other ecologically important ecosystems, (3) improved private sector environmental performance, and (4) environmental education, transparency, and public participation in environmental decision-making and enforcement.

The Department of State invites Government agencies and the public, including NGOs, educational institutions, private sector enterprises, and other interested persons, to submit written comments or suggestions regarding items for the Plan of Action. In preparing such comments or suggestions, we encourage submitters to refer to: (1) The U.S.-Morocco Joint Statement on Environmental Cooperation, (2) the 2005–2007 Plan of Action, (3) the Free Trade Agreement between the United States and Morocco, (4) the 2004 Final Environmental Review of the U.S.-Morocco Free Trade Agreement, and (5) the website of the Moroccan Ministry of the Environment (French and Arabic) which are all available or linked at: *http://www.state.gov/g/oes/env/trade/.* In the near future, the Department of State will be seeking ideas and suggestions for environmental cooperation projects with U.S. Free Trade Agreement partners Bahrain and Oman through similar **Federal Register** notices.

DATES: To be assured of timely consideration, all written comments or suggestions are requested no later than November 4, 2009.

ADDRESSES: Written comments or suggestions should be e-mailed (*LowtherAB@state.gov*) or faxed ((202) 647–1052) to Alan Lowther, U.S. Department of State, Bureau of Oceans, Environment, and Science, Office of Environmental Policy, with the subject line ''U.S.-Morocco Work Plan on Environmental Cooperation.'' For those with access to the Internet, comments may be submitted at the following address: *http://www.regulations.gov/search/Regs/home.html#home.*

FOR FURTHER INFORMATION CONTACT: Alan Lowther, telephone (202) 647–6777.

SUPPLEMENTARY INFORMATION: In Paragraph 5 of the U.S.-Morocco Joint Statement on Environmental Cooperation, the United States and Morocco announced the establishment of a Working Group on Environmental

Cooperation intended to meet regularly. The mandate of the Working Group is to advance environmental protection in Morocco by developing cooperative environmental activities that take into account environmental priorities and that are agreed to by the two Governments. The Working Group will develop a Plan of Action towards meeting this goal.

The 2005–2007 Plan of Action focused on a set of mutually identified goals in line with the main themes of cooperation noted above. These goals were: (1) Strengthening the capacity to develop, implement and enforce environmental laws and regulations, (2) encouraging the development of incentives and voluntary mechanisms to contribute to the achievement and maintenance of high levels of environmental protection, (3) promoting opportunities for public participation in environmental protection efforts and improving public access to information and access to justice on environmental issues, (4) protecting coastal environmental zones and estuaries and preventing the over-exploitation of fisheries resources, (5) safeguarding important natural resources, such as water, and protected areas in Morocco, and (6) promoting the growth of the environmental-technology business sector. Some indicative actions undertaken in these areas have included workshops on environmental impact assessment and the use of economic incentives for environmental decision making. Ongoing work includes: Assistance to Morocco on enhanced compliance with the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) through legislation; technical assistance for a plan to enforce environmental rules in the textile sector; and development of a plan to manage waste from olive oil factories. The United States Agency for International Development, the Department of the Interior, the Department of Commerce, the Environmental Protection Agency, the Department of Agriculture and the Trade and Development Agency and others have been involved in implementing these activities. The 2009–2011 Plan of Action seeks to build upon the progress made in the previous Plan of Action.

The Plan of Action to be developed envisions cooperative activities in four main priority areas: Institutional and policy strengthening; biodiversity conservation and improved management of protected areas; improved private sector environmental performance; and environmental education, transparency, and public participation in environmental decision-making and enforcement.

Please refer to the State Department Web site at *http://www.state.gov/g/oes/env/trade/*.

Dated: October 13, 2009.

Lawrence J. Gumbiner,

Director, Office of Environmental Policy, U.S. Department of State.

[FR Doc. E9–25081 Filed 10–16–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0256]

Agency Information Collection Activities; Revision of a Currently Approved Information Collection Request: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collected will be used to help ensure that motor carriers of passengers and property maintain appropriate levels of financial responsibility to operate on public highways.

DATES: We must receive your comments on or before December 18, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA–2009–0256 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC 20590–0001 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting them on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19476). This information is also available at *http://docketsinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, Commercial Enforcement Division, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–385–2405; *e-mail: dorothea.grymes@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation is responsible for implementing regulations which establish minimal levels of financial responsibility for: (1) For-hire motor carriers of property to cover public liability, property damage and environment restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—

49 CFR 387.9; and motor carrier of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information enclosed within these documents.

Title: Financial Responsibility for Motor Carrier of Passengers and Motor Carriers of Property.

OMB Control Number: 2126–0008.

Type of Request: Revision of a currently-approved information collection.

Respondents: Insurance and surety companies of motor carriers of property (Forms MCS–90 and MCS–82) and motor carriers of passengers (Forms MCS–90B and MCS–82B).

Estimated Number of Respondents: 175,338.

Estimated Time per Response: The FMCSA estimates it takes two minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability or three minutes for the Motor Carrier Public Liability Surety Bond; and one minute to place either document on board the vehicle (foreign-domiciled motor carriers only) [49 CFR 387(f)]. These endorsements are maintained at the motor carrier's principal place of business [49 CFR 387.7(iii)(d)].

Expiration Date: March 31, 2010.

Frequency of Response: Upon creation, change or replacement of an insurance policy or surety bond.

Estimated Total Annual Burden: 4, 056 burden hours [182 hours for Passenger Carriers + 3,401 hours for Property Carriers + 33 hours for Property Carrier Surety Bonds) + 440 hours for placing financial responsibility documents in Canada-domiciled and Mexico- and Non-North America (NNA)-domiciled carriers].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: October 9, 2009.

David Anewalt,

Acting Associate Administrator, for Research and Information Technology.

[FR Doc. E9–25071 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Fiscal Year 2010 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Pursuant to 49 U.S.C. 5323(n), FTA is authorized to consolidate the certifications and assurances required by Federal law or regulations for its programs into a single document. FTA is also required by 49 U.S.C. 5323(n) to publish a list of those certifications and assurances annually.

Appendix A of this Notice contains the comprehensive compilation of FTA's Certifications and Assurances for Federal Fiscal Year (Federal FY) 2010 applicable to the various Federal assistance programs that FTA will administer during that Federal FY. FTA's Certifications and Assurances for Federal FY 2010 reflect Federal statutory, regulatory, and programmatic changes that have now become effective.

DATES: *Effective Date:* These FTA Certifications and Assurances are effective on October 1, 2009, the first day of Federal FY 2010.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate FTA Regional Office or FTA Metropolitan Office listed below. For copies of other related documents, see the FTA Web site at *http://www.fta.dot.gov* or contact FTA's Office of Administration at 202–366–4022.

Region 1: Boston

States served: Connecticut (bus only), Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Telephone # 617–494–2055.

Region 2: New York

States served: Connecticut (rail only), New York, and New Jersey. Telephone # 212–668–2170.

Region 3: Philadelphia

States served: Delaware, Maryland, Pennsylvania, Virginia, and West Virginia. Telephone # 215–656–7100.

Region 4: Atlanta

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Territories served: Puerto Rico and the U.S. Virgin Islands. Telephone # 404–865–5600.

Region 5: Chicago

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Telephone # 312–353–2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Telephone # 817–978–0550.

Region 7: Kansas City

States served: Iowa, Kansas, Missouri, and Nebraska. Telephone # 816–329–3920.

Region 8: Denver

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Telephone # 720–963–3300.

Region 9: San Francisco

States served: Arizona, California, Hawaii, Nevada, Territories served: Guam, American Samoa, and the Northern Mariana Islands. Telephone # 415–744–3133.

Region 10: Seattle

States served: Alaska, Idaho, Oregon, and Washington. Telephone # 206–220–7954.

Chicago Metropolitan Office

Area served: Chicago Metropolitan Area. Telephone # 312–886–1616.

Los Angeles Metropolitan Office

Area served: Los Angeles Metropolitan Area. Telephone # 213–202–3950.

Lower Manhattan Recovery Office

Area served: Lower Manhattan. Telephone # 212–668–1770.

New York Metropolitan Office

Area served: New York Metropolitan Area. Telephone # 212–668–2201.

Philadelphia Metropolitan Office

Area served: Philadelphia Metropolitan Area. Telephone # 215–656–7070.

Washington DC Metropolitan Office

Area served: Washington DC Metropolitan Area. Telephone # 202–219–3562/219–3565.

SUPPLEMENTARY INFORMATION:

1. Purposes

The purposes of this Notice are to:

• Publish FTA's Federal FY 2010 Certifications and Assurances for Applicants for Federal assistance administered by FTA and the Projects for which they seek Federal assistance.

• Highlight new changes to the FTA Certifications and Assurances now in effect.

• Identify locations where these FTA Certifications and Assurances may be viewed, and

• Provide directions for submitting these FTA Certifications and Assurances.

2. Background

a. *FTA's Responsibilities*. Since Federal FY 1995, FTA has been consolidating the various certifications and assurances that may be required of its Applicants and their projects into a single document for publication in the **Federal Register**. FTA intends to continue publishing this document annually, when feasible in conjunction with its publication of the FTA annual apportionment notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act. Because U.S. DOT's full-year appropriations for Federal FY 2010 were not signed into law on October 1, 2010 (the first day of Federal FY 2010), and have not yet been signed into law, FTA is proceeding with publication of its Certifications and Assurances for FY 2010.

b. *Applicant's Responsibilities*. Irrespective of whether a project will be financed under the authority of 49 U.S.C. chapter 53, Title 23, United States Code, or another Federal statute, the Applicant must submit Federal FY 2010 Certifications and Assurances to FTA applicable to all projects for which the Applicant seeks funding during Federal FY 2010.

FTA requests that an Applicant submit all of the twenty-four (24) categories of the Certifications and Assurances that may be needed for all projects for which the Applicant intends to or might seek Federal assistance in the Federal FY 2010. Selecting and submitting these Certifications and Assurances to FTA signifies the Applicant's intent and ability to comply with all applicable provisions thereof.

In order to assure FTA that the Applicant is authorized under State and local law to certify compliance with the FTA Certifications and Assurances it has selected, FTA requires the Applicant to obtain a current (Federal FY 2010) affirmation signed by the Applicant's attorney affirming the Applicant's legal authority to certify its compliance with the FTA Certifications and Assurances that the Applicant has selected. The Applicant's attorney must sign this affirmation during Federal FY 2010. Irrespective of whether the Applicant makes a single selection of all twenty-four (24) categories of FTA Certifications and Assurances or selects individual categories from the FTA Certifications and Assurances, the Affirmation of Applicant's Attorney from a previous Federal FY is not acceptable, unless FTA expressly determines otherwise in writing.

c. *Effect of Subrecipient Participation*. Absent a written determination by FTA to the contrary, the Applicant itself is ultimately responsible for compliance with the FTA Certifications and Assurances it has selected even though the Project may be carried out in whole or in part by one or more subrecipients. Thus, if subrecipients will be participating in the Project, when the Applicant submits its FTA Certifications and Assurances, the Applicant is also signifying that it will be responsible for compliance, both of itself and of each of its subrecipients, with the provisions of the FTA Certifications and Assurances it has selected. Therefore, in providing Certifications and Assurances that necessarily involve the compliance of any prospective subrecipient, FTA strongly recommends that the Applicant take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient participating in the project, to assure the validity of the Applicant's Certifications and Assurances to FTA.

3. Significant Information About FTA's Certifications and Assurances for Federal FY 2010

a. Legal Implications

(1) *Binding Commitments*. Because the Applicant is required by Federal law and regulations to comply with the applicable provisions of all FTA Certifications and Assurances it submits, it is important that the Applicant be familiar with the provisions of all twenty-four (24) categories of FTA Certifications and Assurances for Federal FY 2010. The text of those Certifications and Assurances is contained in Appendix A of this Notice, and also appears at *http://www.fta.dot.gov/documents/2010-Certs-Appendix.A.pdf*, and in FTA's electronic award and management system, TEAM–Web, *http://ftateamweb.fta.dot.gov*, at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page in the ''Recipients'' option. Provisions of this Notice supersede conflicting statements in any FTA circular containing a previous version of FTA's annual Certifications and Assurances. The Certifications and Assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal FY 2010.

An Applicant's annual Certifications and Assurances to FTA generally remain in effect for either the duration of the Grant or Cooperative Agreement supporting the Project until the Project is closed out or for the duration of the Project or Project property when a useful life or industry standard is in effect, whichever occurs later. If, however, the Applicant provides Certifications and Assurances to FTA in a later year that differ from the Certifications and Assurances previously provided, the later Certifications and Assurances will apply to the Grant, Cooperative Agreement, Project, or Project property, except to the extent FTA permits otherwise in writing.

(2) *Penalties for Noncompliance*. If the Applicant makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal government reserves the right to impose on the Applicant the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, ''Program Fraud Civil Remedies,'' 49 CFR part 31, or the penalties of 49 U.S.C. 5323(l) invoking the criminal provisions of 18 U.S.C. 1001, or other applicable Federal law to the extent the Federal government deems appropriate.

(3) *FTA's Certifications and Assurances Constitute Only a Partial List of Federal Requirements*. FTA cautions that the FTA Certifications and Assurances required by Federal law and regulations do not address all the Federal requirements that will apply to the Applicant and its Project. FTA's Certifications and Assurances are generally pre-award requirements, *i.e.*, those requirements of Federal law and regulations the Applicant must fulfill before FTA is legally authorized to award Federal financial assistance to an Applicant.

(4) *Other Federal Requirements*. Because FTA's Certifications and Assurances do not encompass all Federal requirements that will apply to the Applicant and its Project, FTA strongly encourages the Applicant to

review the Federal authorizing legislation, regulations, and directives pertaining to the program or programs for which the Applicant seeks Federal assistance. The FTA Master Agreement for Federal FY 2010 at *http://www.fta.dot.gov/documents/16-Master.pdf* identifies a substantial number of those Federal laws, regulations, and directives that apply to Applicants and their various projects.

b. *Importance of FTA's Certifications and Assurances for Federal FY 2010.* Following publication of these Certifications and Assurances, FTA may not award Federal financial assistance through a Federal Grant or Cooperative Agreement until the Applicant submits all of the FTA Certifications and Assurances for Federal FY 2010 pertaining to itself and its project as required by Federal laws and regulations. The Applicant's Certifications and Assurances for Federal FY 2010 will be applicable to all projects for which it seeks Federal assistance during Federal FY 2010 and through the next Federal FY until FTA issues its annual Certifications and Assurances for Federal FY 2011.

c. *Federal FY 2010 Changes.* Apart from minor editorial revisions, significant matters concerning FTA's Certifications and Assurances include the following:

(1) In the Introductory paragraphs preceding the text of FTA's Certifications and Assurances, the FTA Web site for the FTA Master Agreement for Federal FY 2010 is identified as *http://www.fta.dot.gov/documents/16-Master.pdf*.

(2) Certification (01)F.5(g) has been revised to substitute a more specific citation to the confidentiality provisions of the Public Health Service Act of 1912, as amended, in lieu of the general citation to the Public Health Service Act of 1912.

(3) The text of Certification (02), ''Lobbying Certification,'' has been revised for consistency with terms used in the Transportation Infrastructure Finance and Innovation Act, 23 U.S.C. chapter 6, and to add a reference to OMB's Standard Form-LLL, ''Disclosure of Lobbying Activities,'' Rev. 7–97, currently in use.

(4) The heading of Certification (23) has been changed from ''Infrastructure Finance Projects'' to ''TIFIA Projects'' for clarity. The acronym ''TIFIA'' has thus been substituted for the term ''Infrastructure Finance'' where used previously.

(5) Although the American Recovery and Reinvestment Act of 2009, Public Law 111–5, February 17, 2009 (''Recovery Act'') requires the submission of certain certifications, as a condition of Recovery Act funding, Recovery Act certifications are submitted individually and separately as required by that Act, rather than as a part of FTA's Annual Certifications and Assurances. For that reason, we have not added a new category for annual Recovery Act certifications and assurances.

d. *When to Submit.* All Applicants for FTA formula program or capital program assistance, and current FTA Grantees with an active project financed with FTA formula program or capital program assistance, are expected to provide their FTA Certifications and Assurances for Federal FY 2010 within 90 days from the date of this publication or as soon as feasible after their first application for Federal assistance authorized or made available for Federal FY 2010, whichever is earlier. In addition, FTA encourages Applicants seeking Federal assistance for other projects to submit their FTA Certifications and Assurances to FTA as soon as possible to expedite awards of FTA assistance.

4. Ways To Submit FTA Certifications and Assurances

As further explained, FTA will accept an Applicant's Certifications and Assurances submitted either in TEAM–Web at *http://ftateamweb.fta.dot.gov*, or on paper containing the text set forth on the Signature Page(s) of Appendix A of this Notice. In order of preference, FTA permits:

a. *Electronic Submission in Team-Web.* An Applicant registered in TEAM–Web must submit its FTA Certifications and Assurances, as well as its applications for Federal assistance in TEAM–Web. FTA prefers that other Applicants for Federal assistance submit their FTA Certifications and Assurances through TEAM–Web.

The TEAM–Web ''Recipients'' option at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page contains fields for selecting among the twenty-four (24) categories of FTA Certifications and Assurances to be submitted. There is also a field for entering a single selection covering all twenty-four (24) categories of FTA Certifications and Assurances.

Within the ''Cert's & Assurances'' tab is a field for the Applicant's authorized representative to enter his or her personal identification number (PIN), which constitutes the Applicant's electronic signature for the FTA Certifications and Assurances selected. In addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal authority to make and comply with the FTA Certifications and Assurances the Applicant has selected. The Applicant's authorized representative may enter his or her PIN in lieu of the Attorney's PIN, provided that the Applicant has a current Affirmation of Applicant's Attorney as set forth in Appendix A of this Notice, written and signed by the attorney in Federal FY 2010.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice or the TEAM–Web Helpdesk.

b. *Paper Submission.* Only if the Applicant is unable to submit its FTA Certifications and Assurances in TEAM–Web may the Applicant submit its FTA Certifications and Assurances on paper.

If an Applicant is unable to submit its FTA Certifications and Assurances electronically, it must mark the categories of FTA Certifications and Assurances it is making on the Signature Page(s) in Appendix A of this Notice and submit them to FTA. The Applicant may signify compliance with all categories by placing a single mark in the appropriate space or select the categories applicable to itself and its projects.

The Applicant must enter its signature on the Signature Page(s) and must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity to make and comply with the Certifications and Assurances the Applicant has selected. The Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney as set forth in Appendix A of this Notice, written and signed by the attorney and dated in Federal FY 2010.

For more information, the Applicant may contact the appropriate FTA Regional Office or Metropolitan Office listed in this Notice.

Authority. 49 U.S.C. chapter 53; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), as amended by the SAFETEA–LU Technical Corrections Act, 2008, Public Law 110–244, June 6, 2008; Title 23, United States Code (Highways); other Federal laws administered by FTA; U.S. DOT and FTA regulations at Title 49, Code of Federal Regulations; and FTA Circulars.

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

Peter M. Rogoff,

Administrator.

BILLING CODE 4910–57–P

APPENDIX A

FEDERAL FISCAL YEAR 2010 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

PREFACE

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2010. Category 01 applies to all Applicants. Category 02 applies to all applications for Federal assistance in excess of $100,000. Categories 03 through 24 will apply to and be required for some, but not all, Applicants and projects. An Applicant may select a single certification that will cover all the programs for which it anticipates submitting an application. FTA requests each Applicant to read each certification and assurance carefully and select all certifications and assurances that may apply to the programs for which it expects to seek Federal assistance.

FTA and the Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of project and the section of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurances reflect applicable requirements of FTA's enabling legislation currently in effect.

The Applicant also understands and agrees that these certifications and assurances are special pre-award requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the current FTA Master Agreement MA(16) for Federal Fiscal Year 2010 at the FTA Web site http://www.fta.dot.gov/documents/16-Master.pdf. The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.

Because many requirements of these certifications and assurances will require the compliance of the subrecipient of an Applicant, we strongly recommend that each Applicant, including a State, that will be implementing projects through one or more subrecipients, secure sufficient documentation from each subrecipient to assure compliance, not only with these certifications and assurances, but also with the terms of the Grant Agreement or Cooperative Agreement for the project, and the applicable Master Agreement for its project, if applicable, incorporated therein by reference. Each Applicant is ultimately responsible for compliance with the provisions of the certifications and assurances applicable to itself or its project irrespective of participation in the project by any subrecipient. The Applicant understands and agrees that when it applies for FTA assistance on behalf of a consortium, joint venture, partnership, or team, each member of that consortium, joint venture, partnership, or team is responsible for compliance with the certifications and assurances the Applicant selects.

APPENDIX A

FTA strongly encourages each Applicant to submit its certifications and assurances through TEAM-Web, FTA's electronic award and management system, at http://ftateamweb.fta.dot.gov. Twenty-four (24) Categories of certifications and assurances are listed by numbers 01 through 24 in the TEAM-Web "Recipients" option at the "Cert's & Assurances" tab of "View/Modify Recipients." Should the Applicant choose not to submit its certifications and assurances through TEAM-Web, the Applicant may submit its certifications and assurances on paper by submitting the Signature Page(s) at the end of this document, indicating the certifications and assurances it is making on one side of the document or on one page, and signing its affirmation and that of its attorney on the other side or other page.

01. ASSURANCES REQUIRED FOR EACH APPLICANT

Each Applicant for FTA assistance must provide all assurances in this Category "01." Except to the extent that FTA expressly determines otherwise in writing, FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category "01."

A. Assurance of Authority of the Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State, local, or Indian tribal law and regulations, and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;
(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and
(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement with FTA issued for its project. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

Except if the Applicant is an Indian tribal government seeking assistance authorized by 49 U.S.C. 5311(c)(1), the Applicant assures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the

APPENDIX A

appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17. This assurance does not apply to Applicants for Federal assistance under FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project;
(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these provisions;
(3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project;
(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits;

APPENDIX A

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under Title VI of the Civil Rights Act, U.S. DOT implementing regulations, and this assurance; and
(6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

F. U.S. Office of Management and Budget (OMB) Assurances

Consistent with OMB assurances set forth in SF-424B and SF-424D, the Applicant assures that, with respect to itself or its project, the Applicant:
(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to assure proper planning, management, and completion of the project described in its application;
(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;
(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;
(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;
(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:
    (a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

APPENDIX A

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;
(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;
(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;
(e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*, relating to nondiscrimination on the basis of drug abuse;
(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2., relating to confidentiality of alcohol and drug abuse patient records;
(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing; and
(i) Any other nondiscrimination statute(s) that may apply to the project;

(6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable State and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:
(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;
(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;
(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;
(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

APPENDIX A

(e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, at 18 U.S.C. 874, and at 40 U.S.C. 3145, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.,* regarding labor standards for federally assisted projects;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;

(11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to assure

APPENDIX A

that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the State;

(14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j-6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c ; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) To the extent applicable, will comply with the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.,* and U.S. DOT regulations, "Protection of

APPENDIX A

Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) To the extent applicable, will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Revised, and the most recent applicable OMB A-133 Compliance Supplement provisions for the U.S. DOT; and

(19) To the extent applicable, will comply with all applicable provisions of all other Federal laws or regulations, and follow Federal directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

02. LOBBYING CERTIFICATION

An Applicant that submits or intends to submit an application to FTA for any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding $100,000 is required to provide the following certification. FTA may not award Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding $100,000 until the Applicant provides this certification by selecting Category "02."

A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to U.S. DOT or FTA for a Federal grant, loan (including a line of credit), cooperative agreement, or a commitment that the Federal Government to guarantee or insure a loan exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," Rev. 7-97; and

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts

APPENDIX A

under grants, loans (including a line of credit), cooperative agreements, loan guarantees, and loan insurance).

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

03. PROCUREMENT COMPLIANCE

In accordance with 49 CFR 18.36(g)(3)(ii), each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance to acquire property or services in support of its project is requested to provide the following certification by selecting Category "03." FTA also requests other Applicants to provide the following certification. An Applicant for FTA assistance to acquire property or services in support of its project that fails to provide this certification may be determined ineligible for award of Federal assistance for the project, if FTA determines that its procurement practices and procurement system fail to comply with Federal laws or regulations in accordance with applicable Federal directives.

The Applicant certifies that its procurements and procurement system will comply with all applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent FTA has expressly approved otherwise in writing.

04. PROTECTIONS FOR PRIVATE TRANSPORTATION PROVIDERS

Each Applicant that is a State, local, or Indian tribal government that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any property or an interest in the property of a private provider of public transportation or to operate public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing private provider of public transportation is required to provide the following certification. FTA may not award Federal assistance for such a project until the Applicant provides this certification by selecting Category "04."

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private provider of public transportation or operates public transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing public transportation company, it has or will have:

A. Determined that the assistance is essential to carrying out a program of projects as required by 49 U.S.C. 5303, 5304, and 5306;
B. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible; and
C. Paid just compensation under State or local law to the company for any franchise or property acquired.

APPENDIX A

05. PUBLIC HEARING

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's public transportation service is required to provide the following certification. FTA may not award Federal assistance for a capital project of that type until the Applicant provides this certification by selecting Category "05."

As required by 49 U.S.C. 5323(b), for a proposed capital project that will substantially affect a community, or the public transportation service of a community, the Applicant certifies that it has, or before submitting its application, it will have:

A. Provided an adequate opportunity for public review and comment on the proposed project;
B. After providing notice, including a concise description of the proposed project, published in a newspaper of general circulation in the geographic area to be served, held a public hearing on the project if the project affects significant economic, social, or environmental interests;
C. Considered the economic, social, and environmental effects of the proposed project; and
D. Determined that the proposed project is consistent with official plans for developing the community.

06. ACQUISITION OF ROLLING STOCK FOR USE IN REVENUE SERVICE

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 to acquire any rolling stock for use in revenue service is required to provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until the Applicant provides this certification by selecting Category "06."

As required by 49 U.S.C. 5323(m) and implementing FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR part 663, at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 as modified by amendments authorized by section 3023(k) of SAFETEA-LU when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

07. ACQUISITION OF CAPITAL ASSETS BY LEASE

An Applicant that intends to request the use of Federal assistance authorized under 49 U.S.C. chapter 53 to acquire capital assets by lease is required to provide the following certifications. FTA may not provide Federal assistance to support those costs until the Applicant provides this certification by selecting Category "07."

As required by FTA regulations, "Capital Leases," 49 CFR part 639, at 49 CFR 639.15(b)(1) and 49 CFR 639.21, if the Applicant acquires any capital asset by lease financed with Federal assistance authorized under 49 U.S.C. chapter 53, the Applicant certifies as follows:

APPENDIX A

(1) It will not use Federal assistance authorized under 49 U.S.C. chapter 53 to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset; and it will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and
(2) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate financial resources to meet its future obligations under the lease if Federal assistance is not available for capital projects in the subsequent years.

08. BUS TESTING

An Applicant for Federal assistance appropriated or made available for 49 U.S.C. chapter 53 to acquire any new bus model or any bus model with a new major change in configuration or components is required to provide the following certification. FTA may not provide Federal assistance for the acquisition of any new bus model or bus model with a major change until the Applicant provides this certification by selecting Category "08."

As required by 49 U.S.C. 5318 and FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that, before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665):
A. The bus model will have been tested at FTA's bus testing facility; and
B. The Applicant will have received a copy of the test report prepared on the bus model.

09. CHARTER SERVICE AGREEMENT

An Applicant seeking Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, to acquire or operate any public transportation equipment or facilities is required to enter into the following Charter Service Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 (except as permitted by 49 CFR 604.2), or under 23 U.S.C.133 or 142, for such projects until the Applicant enters into this Charter Service Agreement by selecting Category "09."

A. As required by 49 U.S.C. 5323(d) and (g) and FTA regulations at 49 CFR 604.4, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.
B. The Applicant understands and agrees that:
   (1) The requirements of FTA regulations, "Charter Service," 49 CFR part 604, will apply to any charter service it or its subrecipients, lessees, third party contractors, or other participants in the project provide;
   (2) The definitions of FTA regulations, "Charter Service," 49 CFR part 604, will apply to

this Charter Service Agreement; and

(3) A pattern of violations of this Charter Service Agreement may require corrective measures and imposition of remedies, including barring the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has engaged in that pattern of violations from receiving FTA financial assistance, or withholding an amount of Federal assistance as set forth in FTA regulations, "Charter Service," 49 CFR part 604, Appendix D.

10. SCHOOL TRANSPORTATION AGREEMENT

An Applicant that is seeking Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C.133 or 142 to acquire or operate public transportation facilities and equipment is required to enter into the following School Transportation Agreement. FTA may not provide Federal assistance authorized under 49 U.S.C. chapter 53 or under 23 U.S.C.133 or 142 for such projects until the Applicant enters into this School Transportation Agreement by selecting Category "10."

A. As required by 49 U.S.C. 5323(f) and (g) and FTA regulations at 49 CFR 605.14, the Applicant understands and agrees that it and each subrecipient, lessee, third party contractor, or other participant in the project at any tier may engage in school transportation operations in competition with private school transportation operators that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), the terms and conditions of which are incorporated herein by reference.

B. The Applicant understands and agrees that:

(1) The requirements of FTA regulations, "School Bus Operations," 49 CFR part 605, to the extent consistent with 49 U.S.C. 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third party contractors, or other participants in the project provide;

(2) The definitions of FTA regulations, "School Bus Operations," 49 CFR part 605 will apply to this School Transportation Agreement; and

(3) If there is a violation of this School Transportation Agreement, FTA will bar the Applicant, subrecipient, lessee, third party contractor, or other participant in the project that has violated this School Transportation Agreement from receiving Federal transit assistance in an amount FTA considers appropriate.

11. DEMAND RESPONSIVE SERVICE

An Applicant that operates demand responsive service and applies for direct Federal assistance authorized under 49 U.S.C. chapter 53 to acquire non-rail public transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized under 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail public transportation vehicles until the Applicant provides this certification by selecting Category "11."

APPENDIX A

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Viewed in its entirety, the Applicant's service for individuals with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

12. ALCOHOL MISUSE AND PROHIBITED DRUG USE

If the Applicant is required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its public transportation operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category "12."

As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655.

13. INTEREST AND OTHER FINANCING COSTS

An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects financed with Federal assistance under the Urbanized Area Formula Program, the Capital Investment Program, or the Paul S. Sarbanes Transit in Parks Program is required to provide the following certification. FTA may not provide Federal assistance to support interest or other financing costs until the Applicant provides this certification by selecting Category "13."

As required by 49 U.S.C. 5307(g)(3), 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), 5309(i)(2)(C), and 5320(h)(2)(C), the Applicant certifies that it will not seek reimbursement for interest or other financing costs unless it is eligible to receive Federal assistance for those costs and its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

14. INTELLIGENT TRANSPORTATION SYSTEMS

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture," is requested to provide the following

APPENDIX A

assurance. FTA strongly encourages any Applicant for FTA financial assistance to support an ITS project to provide this assurance by selecting Category "14." An Applicant for FTA assistance for an ITS project that fails to provide this assurance, without providing other documentation assuring its commitment to comply with applicable Federal ITS standards and protocols, may be determined ineligible for award of Federal assistance for the ITS project.

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture."

A. As provided in subsection 5307(c) of SAFETEA-LU, 23 U.S.C. 512 note, apart from certain exceptions, "intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, including funds made available under this subtitle to deploy intelligent transportation system technologies, [shall] conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection (a) [of section 5307 of SAFETEA-LU]." To facilitate compliance with subsection 5307(c) of SAFETEA-LU, 23 U.S.C. 512 note, the Applicant assures it will comply with all applicable provisions of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," at 66 FR 1455 *et seq.*, January 8, 2001, and other FTA policies that may be issued in connection with any ITS project it undertakes financed with funds authorized under Title 49 or Title 23, United States Code, except to the extent that FTA expressly determines otherwise in writing; and

B. With respect to any ITS project financed with Federal assistance derived from a source other than Title 49 or Title 23, United States Code, the Applicant assures that it will use its best efforts to assure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

15. URBANIZED AREA FORMULA PROGRAM

Each Applicant for Urbanized Area Formula Program assistance authorized under 49 U.S.C. 5307 is required to provide the following certifications on behalf of itself and any subrecipients participating in its projects. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. If, however a "Designated Recipient" as defined at 49 U.S.C. 5307(a)(2)(A) enters into a Supplemental Agreement with FTA and a Prospective Grantee, that Grantee is recognized as the Applicant for Urbanized Area Formula Program assistance and must provide the following certifications and assurances.

Each Applicant is required by 49 U.S.C. 5307(d)(1)(J) to expend at least one (1) percent of its

APPENDIX A

Urbanized Area Formula Program assistance for public transportation security projects, unless the Applicant has certified that such expenditures are not necessary. Information about the Applicant's intentions will be recorded in the "Security" tab page of the TEAM-Web "Project Information" window when the Applicant enters its Urbanized Area Formula Program application in TEAM-Web.

FTA may not award Urbanized Area Formula Program assistance to any Applicant that is required by 49 U.S.C. 5307(d)(1)(K) to expend one (1) percent of its Urbanized Area Formula Program assistance for eligible transit enhancements unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list or the Applicant attaches in TEAM-Web or includes in its quarterly report information sufficient to demonstrate that the Designated Recipients in its area together have expended one (1) percent of the amount of Urbanized Area Program assistance made available to them for transit enhancement projects.

FTA may not award Federal assistance for the Urbanized Area Formula Program to the Applicant until the Applicant provides these certifications and assurances by selecting Category "15."

As required by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:

A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of Project equipment and facilities;
C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the Project equipment and facilities;
D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, not more than fifty (50) percent of the peak hour fare;
E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5307: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested

APPENDIX A

parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has assured or will assure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;

J. In compliance with 49 U.S.C. 5307(d)(1)(J), each Federal fiscal year, the Applicant will spend at least one (1) percent of its funds authorized by 49 U.S.C. 5307 for public transportation security projects, unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of existing or planned public transportation; and

K. In compliance with 49 U.S.C. 5307(d)(1)(K), if the Applicant is a Designated Recipient serving an urbanized area with a population of at least 200,000, (1) the Applicant certifies either that it has expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the amount of the Urbanized Area Formula Assistance it receives this Federal fiscal year, or that at least one Designated Recipient in its urbanized area has certified or will certify that the Designated Recipients within that urbanized area together have expended or will expend for transit enhancements as defined at 49 U.S.C. 5302(a)(15) not less than one (1) percent of the total amounts the Designated Recipients receive each Federal fiscal year under 49 U.S.C. 5307, and (2) either the Applicant has listed or will list the transit enhancement projects it has carried out with those

APPENDIX A

funds, or at least one Designated Recipient in the Applicant's urbanized area has listed or will list the transit enhancement projects carried out with funds authorized under 49 U.S.C. 5307. If the Designated Recipient's quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of transit enhancement projects the Designated Recipients in its urbanized area have implemented during that preceding Federal fiscal year using those funds, the information in that quarterly report will fulfill the requirements of 49 U.S.C. 5307(d)(1)(K)(ii), and thus that quarterly report will be incorporated by reference and made part of the Designated Recipient's and Applicant's certifications and assurances.

16. CLEAN FUELS GRANT PROGRAM

Each Applicant for Clean Fuels Grant Program assistance authorized under 49 U.S.C. 5308 is required to provide the following certifications on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the Applicant is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the Clean Fuels Grant Program until the Applicant provides these certifications by selecting Category "16."

As required by 49 U.S.C. 5308(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Clean Fuels Grant Program assistance, and 49 U.S.C. 5307(d)(1), the designated recipient or the recipient serving as the Applicant on behalf of the designated recipient, or the State or State organization serving as the Applicant on behalf of the State, certifies as follows:

A. In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
B. In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
C. In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
D. In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5308, not more than fifty (50) percent of the peak hour fare;
E. In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5308: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of

APPENDIX A

49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

F. In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, the Applicant: (1) has made available, or will make available, to the public information on the amounts available for the Clean Fuels Grant Program, 49 U.S.C. 5308, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (3) has published or will publish a list of the proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;

G. In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5308(d)(2) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

H. In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

I. In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and

J. The Applicant certifies it will operate vehicles purchased with Federal assistance provided under the Clean Fuels Grant Program, 49 U.S.C. 5308 only with clean fuels.

17. ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES FORMULA GRANT PROGRAM AND PILOT PROGRAM

Before FTA may award Elderly Individuals and Individuals with Disabilities Formula Grant Program assistance and, if applicable, Elderly Individuals and Individuals with Disabilities Pilot Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award determinations required by 49 U.S.C. 5310. Because certain information is needed before FTA can make those determinations, each State is requested to provide the following certifications assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor,

APPENDIX A

or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5310 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Elderly Individuals and Individuals with Disabilities Formula Grant Program and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by 49 U.S.C. 5310 and section 3012 of SAFETEA-LU, respectively. The State is thus requested to select Category "17."

A. As required by 49 U.S.C. 5310(d), which makes the requirements of 49 U.S.C. 5307 applicable to the Elderly Individuals and Individuals with Disabilities Formula Grant Program to the extent that the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the State or State organization serving as the Applicant (State) and that administers, on behalf of the State, the Elderly Individuals and Individuals with Disabilities Program authorized by 49 U.S.C. 5310, and, if applicable, the Elderly Individuals and Individuals with Disabilities Pilot Program authorized by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. 5310 note, certifies and assures on behalf of itself and its subrecipients as follows:
   (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
   (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
   (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
   (4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA-LU: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
   (5) The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5310(c), and if applicable by subsections 3012(b)(3) and (4) of SAFETEA-LU, for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
   (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
   (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil);
   (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through

APPENDIX A

5306 (planning and private enterprise requirements);

B. The State assures that each subrecipient either is recognized under State law as a private nonprofit organization with the legal capability to contract with the State to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310;

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the State concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities;

D. In compliance with 49 U.S.C. 5310(d)(2)(A) and subsection 3012(b)(2) of SAFETEA-LU, the State certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services under 49 U.S.C. 5310;

E. In compliance with 49 U.S.C. 5310(d)(2)(C), the State certifies that allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5310 or subsection 3012(b) of SAFETEA-LU will be distributed on a fair and equitable basis; and

F. In compliance with 49 U.S.C. 5310(d)(2)(B) and subsection 3012(b)(2) of SAFETEA-LU, the State certifies that: (1) projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

18. NONURBANIZED AREA FORMULA PROGRAM FOR STATES

The provisions of 49 U.S.C. 5311 establishing the Nonurbanized Area Formula Program for States do not impose, as a pre-condition of award, any explicit certification or assurance requirements established specifically for that program. Only a State or a State organization acting as the Recipient on behalf of a State (State) may be a direct recipient of this Nonurbanized Area Formula Program assistance. Separate certifications and assurances have been established in Category 22 for an Indian tribe that is an Applicant for Tribal Transit Program assistance authorized by 49 U.S.C. 5311(c)(1).

Before FTA may award Nonurbanized Area Formula Program assistance to a State, the U.S. Secretary of Transportation or his or her designee is required to make the pre-award determinations required by 49 U.S.C. 5311. Because certain information is needed before FTA can make those determinations, each State is requested to provide the following certifications and assurances on behalf of itself and its subrecipients. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. A State that fails to provide these certifications and assurances on behalf of itself and its

APPENDIX A

subrecipients may be determined ineligible for a grant of Federal assistance under 49 U.S.C. 5311 if FTA lacks sufficient information from which to make those determinations required by Federal laws and regulations governing the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311. The State is thus requested to select Category "18."

The State or State organization serving as the Applicant and that administers, on behalf of the State (State) the Nonurbanized Area Formula Program for States authorized by 49 U.S.C. 5311, assures on behalf of itself and its subrecipients as follows:

A. The State has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;
B. The State has or will have satisfactory continuing control over the use of project equipment and facilities;
C. The State assures that the project equipment and facilities will be adequately maintained;
D. In compliance with 49 U.S.C. 5311(b)(2)(C)(i), the State's program has provided for a fair distribution of Federal assistance authorized for 49 U.S.C. 5311 within the State, including Indian reservations within the State;
E. In compliance with 49 U.S.C. 5311(b)(2)(C)(ii), the State's program provides or will provide the maximum feasible coordination of public transportation service to receive assistance under 49 U.S.C. 5311 with transportation service assisted by other Federal sources;
F. The projects in the State's Nonurbanized Area Formula Program are included in the Statewide Transportation Improvement Program and, to the extent applicable, the projects are included in a metropolitan Transportation Improvement Program;
G. The State has or will have available and will provide the amount of funds required by 49 U.S.C. 5311(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
H. In compliance with 49 U.S.C. 5311(f), the State will expend not less than fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. 5311 to develop and support intercity bus transportation within the State, unless the chief executive officer of the State, or his or her designee, after consultation with affected intercity bus service providers, certifies to the Federal Transit Administrator, apart from these certifications and assurances herein, that the intercity bus service needs of the State are being adequately met.

19. JOB ACCESS AND REVERSE COMMUTE FORMULA GRANT PROGRAM

Each Applicant for Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. 5316 is required to provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and

APPENDIX A

assurances the Applicant has made to FTA. FTA may not award Federal assistance for the JARC Formula Grant Program until the Applicant provides these certifications by selecting Category "19."

A. As required by 49 U.S.C. 5316(f)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Job Access and Reverse Commute (JARC) formula grants, and 49 U.S.C. 5307(d)(1), the Applicant for JARC Formula Program assistance authorized under 49 U.S.C. 5316, certifies on behalf of itself and its subrecipients, if any, as follows:
   (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
   (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
   (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
   (4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 49 U.S.C. 5316 not more than fifty (50) percent of the peak hour fare;
   (5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5316: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
   (6) In compliance with 49 U.S.C. 5316(f)(1) and 49 U.S.C. 5307(d)(1)(F), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316, it will conduct a statewide solicitation for applications, and make awards on a competitive basis; and that these activities will be carried out in a manner that complies with or will comply with 49 U.S.C. 5307(c);
   (7) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5316(h) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and
   (8) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with: (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); and (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through

APPENDIX A

5306 (planning and private enterprise requirements);

B. In compliance with 49 U.S.C. 5316(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5316(c)(1)(B) or 49 U.S.C. 5316(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;

C. In compliance with 49 U.S.C. 5316(f)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5316 will be distributed on a fair and equitable basis;

D. In compliance with 49 U.S.C. 5316(g)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services;

E In compliance with 49 U.S.C. 5316(g)(3), the Applicant certifies that: (1) the projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public; and

F. In compliance with 49 U.S.C. 5316(c)(3), before the Applicant uses funding apportioned under 49 U.S.C. 5316(c)(1)(B) or (C) for projects serving an area other than that specified in 49 U.S.C. 5316(2)(B) or (C), the Applicant certifies that the chief executive officer of the State, or his or her designee will have certified to the Federal Transit Administrator, apart from these certifications herein, that all of the objectives of 49 U.S.C. 5316 are being met in the area from which such funding would be derived.

20. NEW FREEDOM PROGRAM

Each Applicant for New Freedom Program assistance authorized under 49 U.S.C. 5317 must provide the following certifications on behalf of itself and any subrecipient that may be implementing its project. Unless FTA determines otherwise in writing, the Applicant itself is ultimately responsible for compliance with its certifications and assurances even though a subrecipient, lessee, third party contractor, or other participant may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its prospective subrecipients, the Applicant is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from each subrecipient, to assure the validity of all certifications and assurances the Applicant has made to FTA. FTA may not award Federal assistance for the New Freedom Program until the Applicant provides these certifications by selecting Category "20."

A. As required by 49 U.S.C. 5317(e)(1), which makes the requirements of 49 U.S.C. 5310 applicable to New Freedom grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, by 49 U.S.C. 5310(d)(1), which makes the requirements of 49 U.S.C. 5307 applicable to Elderly Individuals and Individuals with Disabilities Formula grants to the extent the Federal Transit Administrator or his or her designee determines appropriate, and by 49 U.S.C. 5307(d)(1), the Applicant for New

APPENDIX A

Freedom Program assistance authorized under 49 U.S.C. 5317 certifies and assures on behalf of itself and its subrecipients, if any, as follows:

(1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;

(2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;

(4) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5317: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;

(5) The Applicant has or will have available and will provide the amount of funds required by 49 U.S.C. 5317(g) for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law; and

(6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
(1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil);
(2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

B. In compliance with 49 U.S.C. 5317(d), the Applicant certifies that (1) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(A), it will conduct in cooperation with the appropriate MPO an areawide solicitation for applications, and make awards on a competitive basis and (2) with respect to financial assistance authorized under 49 U.S.C. 5317(c)(1)(B) or 49 U.S.C. 5317(c)(1)(C), it will conduct a statewide solicitation for applications, and make awards on a competitive basis;

C. In compliance with 49 U.S.C. 5317(f)(2), the Applicant certifies that, before it transfers funds to a project funded under 49 U.S.C. 5336, that project has been or will have been coordinated with private nonprofit providers of services;

D. In compliance with 49 U.S.C. 5317(e)(2), the Applicant certifies that any allocations to subrecipients of financial assistance authorized under 49 U.S.C. 5317 will be distributed on a fair and equitable basis; and

E. In compliance with 49 U.S.C. 5317(f)(3), the Applicant certifies that: (1) the projects it has selected or will select for assistance under that program were derived from a locally developed, coordinated public transit-human services transportation plan; and (2) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and through participation by the public.

APPENDIX A

21. PAUL S. SARBANES TRANSIT IN PARKS PROGRAM

Each State, tribal area, or local government authority that is an Applicant for Paul S. Sarbanes Transit in Parks Program assistance (Applicant) authorized by 49 U.S.C. 5320, is required to provide the following certifications. FTA may not award assistance for the Paul S. Sarbanes Transit in Parks Program to the Applicant until the Applicant provides these certifications by selecting Category "21."

A. As required by 49 U.S.C. 5320(i), which makes the requirements of 49 U.S.C. 5307 applicable to the Paul S. Sarbanes Transit in Parks Program to the extent the Federal Transit Administrator or his or her designee determines appropriate, and 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:
   (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed project, including the safety and security aspects of that project;
   (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
   (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
   (4) In compliance with 49 U.S.C. 5307(d)(1)(E), in carrying out a procurement financed with Federal assistance authorized under 49 U.S.C. 5320, the Applicant: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
   (5) In compliance with 49 U.S.C. 5307(d)(1)(F) and with 49 U.S.C. 5320(e)(2)(C), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) has made available, or will make available, to the public information on the amounts available for the Paul S. Sarbanes Transit in Parks Program, 49 U.S.C. 5320, and the projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, projects to be financed; (3) has published or will publish a list of proposed projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (5) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final list of projects; and (7) has made or will make the final list of projects available to the public;
   (6) In compliance with 49 U.S.C. 5307(d)(1)(H), the Applicant will comply with:
   (1) 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and

minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements); and

(7) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation; and

B. In compliance with 49 U.S.C. 5320(e)(2)(A), (B), and (D), the Applicant assures that it will:
   (1) Comply with the metropolitan planning provisions of 49 U.S.C. 5303;
   (2) Comply with the statewide planning provisions of 49 U.S.C. 5304; and
   (3) Consult with the appropriate Federal land management agency during the planning process.

22. TRIBAL TRANSIT PROGRAM

Each Applicant for Tribal Transit Program assistance must provide all certifications and assurances set forth below. Except to the extent that FTA determines otherwise in writing, FTA may not award any Federal assistance under the Tribal Transit Program until the Applicant provides these certifications and assurances by selecting Category "22."

In accordance with 49 U.S.C. 5311(c)(1) that authorizes the Secretary of Transportation to establish terms and conditions for direct grants to Indian tribal governments, the Applicant certifies and assures as follows:

A. The Applicant assures that:
   (1) It has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;
   (2) It has or will have satisfactory continuing control over the use of project equipment and facilities;
   (3) The project equipment and facilities will be adequately maintained; and
   (4) Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources;

B. In accordance with 49 CFR 18.36(g)(3)(ii), the Applicant certifies that its procurement system will comply with the requirements of 49 CFR 18.36, or will inform FTA promptly that its procurement system does not comply with 49 CFR 18.36;

C. To the extent applicable to the Applicant or its Project, the Applicant certifies that it will comply with the certifications, assurances, and agreements in Category 08 (Bus Testing), Category 09 (Charter Bus Agreement), Category 10 (School Transportation Agreement), Category 11 (Demand Responsive Service), Category 12 (Alcohol Misuse and Prohibited Drug Use), and Category 14 (National Intelligent Transportation Systems Architecture and Standards) of this document; and

D. If its application exceeds $100,000, the Applicant agrees to comply with the certification in Category 02 (Lobbying) of this document.

APPENDIX A

23. TIFIA PROJECTS

Each Applicant for Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance authorized under 23 U.S.C. chapter 6, is required to provide the following certifications. FTA may not award TIFIA credit assistance to the Applicant until the Applicant provides these certifications by selecting Category "23."

A. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5307 applicable to Applicants seeking TIFIA credit assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5307(d)(1), the Applicant certifies as follows:
   (1) In compliance with 49 U.S.C. 5307(d)(1)(A), the Applicant has or will have the legal, financial, and technical capacity to carry out its proposed program of projects, including the safety and security aspects of that program;
   (2) In compliance with 49 U.S.C. 5307(d)(1)(B), the Applicant has or will have satisfactory continuing control over the use of project equipment and facilities;
   (3) In compliance with 49 U.S.C. 5307(d)(1)(C), the Applicant will adequately maintain the project equipment and facilities;
   (4) In compliance with 49 U.S.C. 5307(d)(1)(D), the Applicant will assure that any elderly individual, any individual with disabilities, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized under 23 U.S.C. chapter 6, not more than fifty (50) percent of the peak hour fare;
   (5) In compliance with 49 U.S.C. 5307(d)(1)(E), the Applicant, in carrying out a procurement financed with Federal assistance authorized under 23 U.S.C. chapter 6: (1) will use competitive procurement (as defined or approved by FTA), (2) will not use exclusionary or discriminatory specifications in its procurements, (3) will comply with applicable Buy America laws, and (4) will comply with the general provisions for FTA assistance of 49 U.S.C. 5323 and the third party procurement requirements of 49 U.S.C. 5325;
   (6) In compliance with 49 U.S.C. 5307(d)(1)(F), the Applicant has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (a) has made available, or will make available, to the public information on the amounts available for TIFIA credit assistance, 23 U.S.C. chapter 6, and the projects it proposes to undertake; (b) has developed or will develop, in consultation with interested parties including private transportation providers, the proposed projects to be financed; (c) has published or will publish a list of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed projects and submit comments on the proposed projects and the performance of the Applicant; (d) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed projects; (e) has assured or will assure that the proposed projects provide for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal government source; (f) has considered or will consider the comments and views received, especially

APPENDIX A

those of private transportation providers, in preparing its final list of projects; and (g) has made or will make the final list of projects available to the public;

(7) In compliance with 49 U.S.C. 5307(d)(1)(G), the Applicant has or will have available and will provide the amount of funds required for the local share, and that those funds will be provided from approved non-Federal sources except as permitted by Federal law;

(8) In compliance with 49 U.S.C. 5307(d)(1)(H), (1) the Applicant will comply with: 49 U.S.C. 5301(a) (requirements for public transportation systems that maximize the safe, secure, and efficient mobility of individuals, minimize environmental impacts, and minimize transportation-related fuel consumption and reliance on foreign oil); (2) 49 U.S.C. 5301(d) (special efforts to design and provide public transportation for elderly individuals and individuals with disabilities); and (3) 49 U.S.C. 5303 through 5306 (planning and private enterprise requirements);

(9) In compliance with 49 U.S.C. 5307(d)(1)(I), the Applicant has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation;

(10) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5307(d)(1)(J), each Federal fiscal year, the Applicant will spend at least one (1) percent of those funds authorized under 49 U.S.C. 5307 for public transportation security projects (this includes only capital projects in the case of a Applicant serving an urbanized area with a population of 200,000 or more), unless the Applicant has certified to FTA that such expenditures are not necessary. Public transportation security projects include increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation; and

(11) To the extent that the Applicant will be using funds authorized under 49 U.S.C. 5307 for the project, in compliance with 49 U.S.C. 5309(d)(1)(K): (1) an Applicant that serves an urbanized area with a population of at least 200,000 will expend not less than one (1) percent of the amount it receives each Federal fiscal year under 49 U.S.C. 5307 for transit enhancements, as defined at 49 U.S.C. 5302(a), and (2) if it has received transit enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that Federal fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances; and

B. As required by 49 U.S.C. 5323(o), which makes the requirements of 49 U.S.C. 5309 applicable to Applicants seeking TIFIA credit assistance authorized under 23 U.S.C. chapter 6, and by 49 U.S.C. 5309(g)(2)(B)(iii), 5309(g)(3)(B)(iii), and 5309(i)(2)(C), the Applicant certifies that it will not seek reimbursement for interest and other financing costs incurred in connection with the Project unless the Applicant is eligible to receive Federal assistance for those expenses and the Applicant's records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

APPENDIX A

24. DEPOSITS OF FEDERAL FINANCIAL ASSISTANCE TO STATE INFRASTRUCTURE BANKS

The State organization that administers the State Infrastructure Bank (SIB) Program on behalf of a State (State) and that is also an Applicant for Federal assistance authorized under 49 U.S.C. chapter 53 that it intends to deposit in its SIB is requested to provide the following assurances on behalf of itself, its SIB, and each subrecipient. Unless FTA determines otherwise in writing, the State itself is ultimately responsible for compliance with its certifications and assurances even though the SIB and a subrecipient may participate in that project. Consequently, in providing certifications and assurances that involve the compliance of its SIB and prospective subrecipients, the State is strongly encouraged to take the appropriate measures, including but not limited to obtaining sufficient documentation from the SIB and each subrecipient, to assure the validity of all certifications and assurances the State has made to FTA. FTA may not award Federal assistance for the SIB Program to the State until the State provides these assurances by selecting Category "24."

The State organization, serving as the Applicant (State) for Federal assistance for its State Infrastructure Bank (SIB) Program authorized by section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA-21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, agrees and assures the agreement of its SIB and the agreement of each recipient of Federal assistance derived from the SIB within the State (subrecipient) that each public transportation project financed with Federal assistance derived from SIB will be administered in accordance with:

A. Applicable provisions of section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or by section 1511 of TEA-21, 23 U.S.C. 181 note, or by section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181;
B. The provisions of the FHWA, FRA, and FTA or the FHWA and FTA cooperative agreement with the State to establish the State's SIB Program;
C. The provisions of the FTA grant agreement with the State that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of section 1602 of SAFETEA-LU, now codified at 23 U.S.C. 610, or section 1511 of TEA-21, 23 U.S.C. 181 note, or section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 181 note, or Federal guidance pertaining to the SIB Program, the provisions of the cooperative agreement establishing the SIB Program within the State, or the provisions of the FTA grant agreement;
D. The requirements applicable to projects of 49 U.S.C. 5307 and 5309, as required by 49 U.S.C. 5323(o); and
E. The provisions of applicable Federal guidance that may be issued and amendments thereto, unless FTA has provided written approval of an alternative procedure or course of action.

##

Selection and Signature Page(s) follow.

APPENDIX A

FEDERAL FISCAL YEAR 2010 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: _____

The Applicant agrees to comply with applicable provisions of Categories 01 – 24. _____

OR

The Applicant agrees to comply with applicable provisions of the Categories it has selected:

Category	Description	
01.	Assurances Required For Each Applicant.	_____
02.	Lobbying.	_____
03.	Procurement Compliance.	_____
04.	Protections for Private Providers of Public Transportation.	_____
05.	Public Hearing.	_____
06.	Acquisition of Rolling Stock for Use in Revenue Service.	_____
07.	Acquisition of Capital Assets by Lease.	_____
08.	Bus Testing.	_____
09.	Charter Service Agreement.	_____
10.	School Transportation Agreement.	_____
11.	Demand Responsive Service.	_____
12.	Alcohol Misuse and Prohibited Drug Use.	_____
13.	Interest and Other Financing Costs.	_____
14.	Intelligent Transportation Systems.	_____
15.	Urbanized Area Formula Program.	_____
16.	Clean Fuels Grant Program.	_____
17.	Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.	_____
18.	Nonurbanized Area Formula Program for States.	_____
19.	Job Access and Reverse Commute Program.	_____
20.	New Freedom Program.	_____
21.	Paul S. Sarbanes Transit in Parks Program.	_____
22.	Tribal Transit Program.	_____
23.	TIFIA Projects	_____
24.	Deposits of Federal Financial Assistance to a State Infrastructure Banks.	_____

APPENDIX A

FEDERAL FISCAL YEAR 2010 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes and regulations, and follow applicable Federal directives, and comply with the certifications and assurances as indicated on the foregoing page applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2010.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in this document, should apply, as provided, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2010.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized in 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____

Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State, local, or tribal government law, as applicable, to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____

Name_____
Attorney for Applicant

Each Applicant for FTA financial assistance and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. E9–24922 Filed 10–16–09; 8:45 am]
BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0271]

Identification of Interstate Motor Vehicles: New York City, Cook County and New Jersey Tax Identification Requirements; Petition for Determination

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of Petition for Determination; request for comments.

SUMMARY: FMCSA is inviting all interested persons to comment on three petitions submitted by the American Trucking Associations (ATA) requesting determinations that the Commercial Motor Vehicle (CMV) identification requirements imposed by the State of New Jersey, New York City, and Cook County, Illinois are preempted by Federal law. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) prohibits States and their political subdivisions from requiring motor carriers to display in or on CMVs any form of identification other than forms required by the Secretary of Transportation, with certain exceptions. FMCSA seeks comment on whether the credential display requirements described below are preempted or whether they qualify for the relevant exception codified at 49 U.S.C. 14506(b)(3).

DATES: Comments are due on or before November 18, 2009.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this action. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Refer to the Privacy Act heading on *http://www.regulations.gov* for further information.

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the ''Help'' section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this notice are in the docket: FMCSA–2009–0271. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be considered to the extent practicable. FMCSA may, however, issue a final determination at any time after the close of the comment period. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

FOR FURTHER INFORMATION CONTACT: Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–7056; e-mail *Genevieve.Sapir@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

New Jersey's Tax Code requires all motor carriers hauling, transporting, or delivering fuel to display a Motor Fuel Transport License Plate and annual Transport License Certificate. This requirement applies to all motor carriers hauling, transporting, or delivering fuel in New Jersey regardless of their State of domicile or registration. New Jersey Statutes Annotated § 54:39–41 and § 54:39–53.

New York City's Administrative Code requires CMVs used principally in the city or used principally in connection with a business carried on within the city to pay a tax and display a stamp. The requirement appears to apply whether or not the CMV is registered to an address in New York City.[1]

Cook County's Code of Ordinances requires motor vehicle owners residing within the unincorporated area of Cook County to: (a) Display a window sticker showing payment of fees; and (b) paint business vehicle identification information on their vehicles. Article XIV of chapter 74 of the Cook County Code of Ordinances is referred to as the ''Cook County Wheel Tax on Motor Vehicles Ordinance,'' and was amended most recently on March 4, 2009.

Section 4306 of SAFETEA–LU, codified at 49 U.S.C. 14506(a), prohibits States from requiring motor carriers to display in or on CMVs any form of identification other than forms required by the Secretary of Transportation. However, § 14506(b)(3) provides, in part, that ''a State may continue to require display of credentials that are required * * * under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate.'' This authority has been delegated to FMCSA by 49 CFR 1.73 (a)(7). FMCSA believes that Congress intended to limit the exception at § 14506(b)(3) to two categories of requirements. The first includes identification requirements related to motor vehicle license plates. The second includes any other identification displays that the Secretary of Transportation approves.

FMCSA seeks comment on whether the referenced identification display requirements are preempted by Federal law. Specifically, the Agency seeks comment on: (1) Whether New Jersey's, New York City's, and/or Cook County's credential display requirements qualify as identification requirements related to motor vehicle license plates; and/or (2) whether there is any other reason FMCSA should consider approving these requirements under 49 U.S.C.

[1] Chapter 8 of Title 11 of the New York City Administrative Code Tax on Commercial Motor Vehicles and Motor Vehicles for Transportation of Passengers.

14506(b)(3). ATA's petitions seeking determinations, along with the applicable statutes, regulations and ordinances, are available in the docket established for this Notice for inspection.

Request for Comments

FMCSA invites the three affected jurisdictions, as well as any other interested party, to comment on the limited issue of whether New Jersey's, New York City's, and/or Cook County's credential display requirements are preempted in accordance with 49 U.S.C. 14506. Interested parties are requested to limit their comments to this issue. FMCSA has no authority to review the imposition, amounts, or collection of any taxes for which the credentials are issued. FMCSA encourages commenters to submit data or legal authorities supporting their position.

Issued on: September 25, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–25093 Filed 10–16–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA will conduct a public meeting in preparation for the 36th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held November 30–December 9, 2009 in Geneva, Switzerland. During this meeting, PHMSA is also soliciting comments relative to potential new work items which may be considered for inclusion in its international agenda.

Information Regarding The UNSCOE TDG Meeting

DATES: Tuesday, November 10, 2009; 9:30 a.m.–12:30 p.m.

ADDRESSES: The meeting will be held at the DOT Headquarters, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Conference Call Capability/Live Meeting Information: Conference call-in and ''live meeting'' capability will be provided for this meeting. Specific information on call-in and live meeting access will be posted when available at *http://www.phmsa.dot.gov/regs/international.*

FOR FURTHER INFORMATION CONTACT: Mr. Duane Pfund, Director, Office of International Standards or Mr. Shane Kelley, International Transportation Specialist, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to prepare for the 36th session of the UNSCOE TDG, which is the second meeting of the current 2009–2010 biennium. The UNSCOE will consider proposals for the 17th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations which will come into force in the international regulations beginning January 1, 2013. Topics on the agenda for the UNSCOE TDG meeting include:

- Explosives and related matters.
- Listing, classification and packing.
- Electric storage systems.
- Miscellaneous proposals of amendments to the Model Regulations on the Transport of Dangerous Goods.
- Electronic data interchange (EDI) for documentation purposes.
- Cooperation with the International Atomic Energy Agency (IAEA).
- Global harmonization of transport of dangerous goods regulations with the Model Regulations.
- Guiding principles for the Model Regulations.
- Issues relating to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

In addition, PHMSA is soliciting comments on how to further enhance harmonization for international transport of hazardous materials. PHMSA has finalized a broad international strategic plan and welcomes input on items which stakeholders believe should be included as specific initiatives within this plan. PHMSA's Office of International Standards Strategic Plan can be accessed at: *http://www.phmsa.dot.gov/hazmat/regs/international.*

The public is invited to attend without prior notification. Due to the heightened security measures participants are encouraged to arrive early to allow time for security checks necessary to obtain access to the building. Following the 36th session of the UNSCOE TDG, PHMSA will place a copy of the Sub-Committee's report and a summary of the results on PHMSA's Hazardous Materials Safety Homepage at *http://www.phmsa.dot.gov/hazmat/regs/international.*

Documents

Copies of documents for the UNSCOE TDG meeting and the meeting agenda may be obtained by downloading them from the United Nations Transport Division's Web site at: *http://www.unece.org/trans/main/dgdb/dgsubc/c32009.html.* PHMSA's site at *http://www.phmsa.dot.gov/hazmat/regs/international* also provides additional information regarding the UNSCOE TDG and related matters such as summaries of decisions taken at previous sessions of the UNSCOE TDG.

Dr. Magdy El-Sibaie,

Acting Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. E9–24891 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC)—Aviation Rulemaking Advisory Committee Process Improvement.

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee (ARAC) a new task to provide advice and recommendations to the FAA about the current ARAC process. This notice informs the public of the new ARAC activity.

FOR FURTHER INFORMATION CONTACT: Pamela Hamilton, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202–267–8742, facsimile: 202–267–5075; e-mail *pam.hamilton@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation determined the formation and use of an advisory committee to serve as a forum for the FAA to get input from outside the Federal Government on major regulatory issues facing the agency. As a result, the FAA established ARAC.

ARAC is a formal standing advisory committee made up of representatives from aviation associations, aviation industry, public interest groups,

advocacy groups, and interested members of the public. It is composed of a full committee, Executive Committee, issue areas, and working groups (which also include task groups). ARAC's objectives are to improve development of the FAA's regulations by providing information, advice, and recommendations related to aviation issues. The objective includes FAA working with industry and the public to obtain advice and recommendations on the Committee process.

Members of the Executive Committee have suggested there may be more effective means of achieving ARAC's objectives and requested a working group be established to develop possible process improvements. In December 2008, the FAA invited the Executive Committee (EXCOM) to provide input and ideas as part of its effort to re-invigorate the ARAC process.

The June 2009 EXCOM meeting included a presentation of solicited ideas, and proposed actions for the Executive Committee to consider. This notice advises the public that the FAA has assigned, and EXCOM has accepted, a task to recommend improvements to the ARAC process.

The Task

The FAA has tasked the ARAC working group to do the following:

1. Review the ARAC process;
2. Review working group and ARAC experiences with the process;
3. Develop recommendations for process improvements; and
4. Forward recommendations to the ARAC Executive Committee for review and approval.

Schedule: The task must be completed no later than 12 months after the first working group meeting.

ARAC Acceptance of Task

The ARAC Executive Committee has accepted the task and assigned it to the ARAC Process Improvement Working Group. The working group serves as staff to ARAC and assists in the analysis of the assigned task. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will send them to the FAA.

Working Group Activity

The ARAC Process Improvement Working Group must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the next ARAC Executive Committee meeting held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.
3. Draft the appropriate documents and required analyses and/or any other related materials or documents.
4. Provide a status report at each meeting of the ARAC Executive Committee.

Participation in the Working Group

The ARAC Process Improvement Working Group has been established. However, if you wish to become a member of the working group, write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire. Describe your interest in the task and state the expertise you would bring to the working group. We must receive all requests by November 18, 2009. The Executive Committee and the FAA will review the requests and advise you whether or not your request is approved.

If you are chosen for membership on the working group, you must actively participate in the working group by attending all meetings and providing written comments when requested to do so. You must devote the resources necessary to support the working group in meeting any assigned deadlines. Members will not be added or substituted without the approval of the FAA and the working group chair once the working group has begun deliberations.

ARAC meetings are open to the public. However, ARAC Process Improvement Working Group meetings are not open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on October 13, 2009.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. E9–25010 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–44]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 3, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0891 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette K. Kovite, Standardization Branch, ANM–113, 1601 Lind Avenue, SW., Renton, WA 98057, 425–227–1262, *Annette.Kovite@faa.gov*. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 14, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0891.

Petitioner: Airbus.

Section of 14 CFR Affected: §§ 25.951(c) and 25.952(a).

Description of Relief Sought: Airbus seeks an exemption to permit installation of improved fuel oil heat exchangers on A330 and A340 airplanes powered by Rolls Royce Trent 700 and Trent 500 engines, respectively.

[FR Doc. E9–25060 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–43]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 9, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0711 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, ANM–113, (425) 227–2127, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Ralen Gao, (202) 267–3168, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 14, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0711.

Petitioner: Alegre Equine.

Section of 14 CFR Affected: §§ 25.785(j), 25.812(e), 25.855(a), 25.857(e), 25.1447(c)(1), and 25.1449.

Description of Relief Sought: The petitioner seeks relief from certain cabin safety requirements when operating Boeing 727–100/200 freighters for the purpose of transporting live animals.

[FR Doc. E9–25061 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2007–27897; FMCSA–2007–28695]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 30, 2009. Comments must be received on or before November 18, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2007–27897; FMCSA–2007–28695, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for

this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 19 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Lauren C. Allen
Tracey A. Ammons
David N. Cleveland
Randy B. Combs
Robert L. Cross, Jr.
James D. Davis
Thomas E. Dixon
Edward J. Genovese
Dewayne E. Harms
Mark D. Kraft
David F. LeClerc
Charles D. Oestreich
Carson E. Rohrbaugh
Donald J. Snider
John A. Sortman
Jesse L. Townsend
James A. Welch
Edward W. Yeates, Jr.
Michael E. Yount

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 48504; 68 FR 54775; 70 FR 61165; 72 FR 58359; 64 FR 68195; 65 FR 20251; 67 FR 17102; 66 FR 30502; 66 FR 41654; 68 FR 52811; 68 FR 61860; 72 FR 39879; 72 FR 52419; 72 FR 58359; 72 FR 46261) Each of these 19 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 18, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The

Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: October 8, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–25069 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7165; FMCSA–2002–13411; FMCSA–2005–20560; FMCSA–2006–25246; FMCSA–2007–27897]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 44 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on September 18, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 44 renewal applications, FMCSA renews the Federal vision exemptions for Eddie Alejandro, John W. Black, III. John A. Bridges, Eddie M. Brown, Edward G. Brown, Edwin L. Bupp, Charles E. Castle, Joel C. Conrad, Duane C. Conway, Brian W. Curtis, Roger D. Davidson, Sr., Richard A. Davis, Sr., Robin C. Duckett, Marco A. Esquivel, Tomie L. Estes, Raymond L. Herman, Jesse R. Hillhouse, Jr., Billy R. Holdman, Ray C. Johnson, Terry R. Jones, Randall H. Keil, James A. Kneece, Paul G. Mathes, John T. McWilliams, Robert A. Miller, Stuart T. Miller, James J. Mitchell, Andrew M. Nurnberg, Kenneth R. Pedersen, Joshua R. Perkins, Ronald F. Prezzia, Eligio M. Ramirez, Victor C. Richert, Garry L. Rogers, Craig R. Saari, Jerry L. Schroder, Gerald J. Shamla, Timothy L. Shorey, William C. Smith, Larry D. Steiner, Robert S. Swaen, Anthony T. Truiolo, Gregory A. VanLue, and Kevin W. Wunderlin.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if:

(1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: October 6, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–25070 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2009–0207]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-four individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective October 19, 2009. The exemptions expire on October 19, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://Docketinfo.dot.gov.*

Background

On August 17, 2009, FMCSA published a notice of receipt of Federal diabetes exemption applications from

twenty-four individuals, and requested comments from the public (74 FR 41486). The public comment period closed on September 16, 2009 and one comment was received.

FMCSA has evaluated the eligibility of the twenty-four applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-four applicants have had ITDM over a range of 1 to 27 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the August 17, 2009, **Federal Register** notice (74 FR 41486). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was received from Mr. Kenneth Youngblood. He stated that drivers with ITDM are not second class citizens and that there are no studies that conclude that they are more at-risk drivers. Mr. Youngblood also stated that it is wrong and discriminatory for drivers with ITDM to be singled out.

In response to this comment, FMCSA's exemption process supports drivers with ITDM who seek to operate in interstate commerce. In addition, the Federal Motor Carrier Safety Regulations (FMCSRs) are not contrary to the Americans with Disabilities Act (ADA) of 1990. The mandates of the ADA do not require that FMCSA alter the driver qualification requirements contained in 49 CFR Part 391. The Senate report on the ADA, submitted by its Committee on Labor and Human Resources, included the following explanation:

> With respect to covered entities subject to rules promulgated by the Department of Transportation regarding physical qualifications for drivers of certain classifications of motor vehicles, it is the Committee's intent that a person with a disability applying for or currently holding a job subject to these standards must be able to satisfy these physical qualification standards in order to be considered a qualified individual with a disability under Title I of this legislation. S. Rep. 101–116, at 27 (1989).

FMSCA relies on the expert medical opinion of the endocrinologist and the medical examiner, who are required to analyze individual ability to control and manage the diabetic condition, including the individual ability and willingness of the driver to monitor blood glucose level on an ongoing basis. Until the Agency issues a Final Rule, however, insulin-treated diabetic drivers must continue to apply for exemptions from FMCSA, and request renewals of such exemptions. FMCSA will grant exemptions only to those applicants who meet the specific conditions and comply with all the requirements of the exemption.

Conclusion

After considering the comments to the docket, and based upon its evaluation of the twenty-four exemption applications, FMCSA exempts, Tawnya E. Benner, Lowell R. Brown, Gerald R. Claypool, Robert J. Dupuis, Glenn R. Edwards, John H. Forchette, Jr., Robert A. Gibson, Blaine H. Holmes, Gerald E. Huelle, Edward L. Johnson, Mary V. Johnson, Roger L. Kaufman, Kenneth A. Leeker, Paul L. Meier, Clifford L. Rayl, Robert J. Schafer, Steven J. Shaw, Scott L. Stamstad, Kendell R. Strassman, Allan A. Vanderhamm, Maurice L. Wedel, Michael R. Wellman, Thomas C. Wilson, and Wayne W. Zander from the ITDM

standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: October 6, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–25101 Filed 10–16–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to Systems of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending four existing systems of records 07VA138, ''Department of Medicine and Surgery Engineering Employee Management Information Records-VA''; 20VA138, ''Motor Vehicle Operator Accident Records-VA''; 28VA119, ''Personnel Registration Under Controlled Substance Act-VA and 33VA113, ''National Prosthetics Patient Database-VA'' to: Add a routine use related to the release of information from VA to the Department of Justice (DoJ); add a routine use related to releasing information to entities with whom VA has a contract or subcontract; add a routine use related to releasing information to agencies in the event of fraud or abuse; add a routine use related to disclosing information when there is a risk of embarrassment or harm to the reputations of the record subjects; add a routine use when a violation of law is suspected; and add a routine use related to releasing information for litigation. In 20VA138 existing routine use number three will be replaced with a new routine use which discloses information related to suspected or reasonably imminent violation of the law. In addition, routine uses four through seven will be renumbered as three through six.

DATES: Comments on the amendment of this system of records must be received no later than November 18, 2009. If no public comment is received, the amended system will become effective November 18, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulation.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulation.gov.*

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: VA provides health care services to many of America's Veterans through the Veterans Health Administration. During the course of providing health care, VHA collects medical and health information on Veterans. In order to protect Veteran's medical or health information VHA is adding six routine uses to four existing systems of records (07VA138, 20VA138, 28VA119 and 33VA113).

Additional Routine Uses

The first routine use added to 07VA138, 20VA138, 28VA119 and 33VA113 would permit VA to disclose information from these system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may also disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

According to VA leadership this mandatory new routine use is added to comply to new Federal policy and guidelines.

The second routine use added to 07VA138, 20VA138, 28VA119 and 33VA113 allows VA to disclosure relevant information made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

According to VA leadership this mandatory new routine use is added to comply to new Federal policy and guidelines.

The third routine use added to 07VA138, 20VA138, 28VA119 and 33VA113 allows VA to disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

The routine use added to these four systems of records would permit VA to disclose information in its files in the event of fraud or abuse.

The fourth routine use added to 07VA138, 20VA138, 28VA119 and 33VA113 allows VA, on its own initiative, to disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are

reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

The fifth routine use added to 07VA138, 20VA138, and 28VA119 allows VA to disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

According to VA leadership this mandatory new routine use is added to comply to new Federal policy and guidelines.

The sixth routine use added to 07VA138, 20VA138, 28VA119 and 33VA113 allows VA to disclose information to another federal agency, court, or party in litigation before a court or other administrative proceedings conduced by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

The routine use added to these four system of records would allow VA to disclose information in discovery during litigation.

The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: September 25, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

Notice of Amendment of Systems of Records

1. In the system identified as 07VA138, ''Department of Medicine and Surgery Engineering Employee Management Information Records-VA'', as set forth in the Privacy Act Issuances, 1980 Compilation, Volume V and last amended in the 21 Appendix B–6 (Oct. 17, 1984). Six new routine uses are added as follows:

07VA138

SYSTEM NAME:

Department of Medicine and Surgery Engineering Employee Management Information Records-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

7. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

9. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

10. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

11. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

12. VA may, on its own initiative, disclose information to another federal agency, court, or party in litigation before a court or other administrative proceedings conduced by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

2. In the system identified as 20VA138, ''Motor Vehicle Operator Accident Records–VA'', as set forth in the Privacy Act Issuances, 1980

Compilation, Volume V and last amended in the 21 Appendix B–6 (Oct. 17, 1984). Six new routine uses are added as follows:

20VA138

SYSTEM NAME:

Motor Vehicle Operator Accident Records–VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

7. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

9. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

10. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

11. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

12. VA may, on its own initiative, disclose information to another federal agency, court, or party in litigation before a court or other administrative proceedings conduced by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

3. In the system identified as 28VA119, ''Personnel Registration Under Controlled Substance Act–VA'', as set forth in the **Federal Register** 58 FR 40852, and last amended in July 30, 1993. Six new routine uses are added as follows:

28VA119

SYSTEM NAME:

Personnel Registration Under Controlled Substances Act-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

9. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

10. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

12. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or

remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

13. VA may disclose on its own initiative any information in the system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

14. VA may, on its own initiative, disclose information to another federal agency, court, or party in litigation before a court or other administrative proceedings conduced by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

4. In the system identified as 33VA113, ''National Prosthetics Patient Database-VA'', as set forth in the **Federal Register** 79 FR 3980, and last amended in Jan. 27, 2005. Five new routine uses are added as follows

33VA113

SYSTEM NAME:

National Prosthetics Patient Database-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

6. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

7. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

8. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

9. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

10. VA may, on its own initiative, disclose information to another federal agency, court, or party in litigation before a court or other administrative proceedings conduced by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

[FR Doc. E9–25039 Filed 10–16–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
October 19, 2009

Part II

Environmental Protection Agency

40 CFR Part 141

National Primary Drinking Water Regulations: Drinking Water Regulations for Aircraft Public Water Systems; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2005–0025; FRL–8967–9]

RIN 2040–AE84

National Primary Drinking Water Regulations: Drinking Water Regulations for Aircraft Public Water Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is establishing Federal drinking water requirements (known as national primary drinking water regulations or NPDWRs) for aircraft public water systems (hereafter, aircraft water systems) under the Safe Drinking Water Act (SDWA). Federal drinking water standards were primarily designed to regulate water quality in stationary public water systems, and the application of these requirements to mobile water systems with the capability of flying throughout the world has created implementation challenges. This final rule's requirements are intended to tailor existing health-based drinking water standards to the unique characteristics of aircraft water systems for the enhanced protection of public health against illnesses attributable to microbiological contamination. EPA believes that this approach will better protect public health while building upon existing aircraft operations and maintenance programs, better coordinate Federal programs that regulate aircraft water systems, and minimize disruptions of aircraft flight schedules.

DATES: This rule is effective November 18, 2009. For judicial review purposes, this final rule is promulgated as of October 19, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2005–0025. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 either electronically through *http://www.regulations.gov* or in hard copy at the Water 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 Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Richard Naylor or Cindy Y. Mack, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC–4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: Richard Naylor (202) 564–3847 or Cindy Y. Mack (202) 564–6280; e-mail addresses: *naylor.richard@epa.gov* or *mack.cindy-y@epa.gov.* For general information, contact the Safe Drinking Water Hotline, telephone number: (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

Entities potentially regulated by the Aircraft Drinking Water Rule (ADWR) include air carriers that operate aircraft water systems using finished surface water, finished ground water under the direct influence of surface water (GWUDI), or finished ground water. Regulated categories and entities include:

Category	NAICS code	Examples of regulated entities
Scheduled passenger air transportation	481111	Air carriers.
Nonscheduled chartered passenger air transportation	481211	Air carriers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your air carrier is regulated by this action, you should carefully examine the applicability criteria in § 141.800 of this final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

B. Abbreviations Used in This Notice

ADWR: Aircraft Drinking Water Rule
ANSI: American National Standards Institute
AOCs: Administrative Orders on Consent
ATA: Air Transport Association
BMP: best management practice
CDC: Centers for Disease Control and Prevention
CFR: *Code of Federal Regulations*
CRMP: Comprehensive Representative Monitoring Plan
CWS: community water system
DBP: disinfection byproducts
E. coli: Escherichia coli
EO: Executive Order
EPA: United States Environmental Protection Agency
FAA: United States Federal Aviation Administration
FDA: United States Food and Drug Administration
FR: **Federal Register**
GWS: ground water system
GWUDI: ground water under the direct influence of surface water
HACCP: Hazard Analysis and Critical Control Point
HHS: Department of Health and Human Services
HPC: heterotrophic plate count
ICC: interstate carrier conveyance
ICR: Information Collection Request
IESWTR: Interim Enhanced Surface Water Treatment Rule
LIMS: laboratory information management system
mL: milliliters
MCL: maximum contaminant level
MCLG: maximum contaminant level goal
MDRL: maximum disinfectant residual level
mg/L: milligrams per liter
NAICS: North American Industrial Classification System
NCWS: non-community water system
NDWAC: National Drinking Water Advisory Committee
NPDWR: national primary drinking water regulation
NTNCWS: non-transient non-community water system
NTTAA: National Technology Transfer and Advancement Act
PWS: public water system
OMB: Office of Management and Budget
QAPP: Quality Assurance Project Plan
RFA: Regulatory Flexibility Act
SAB: Science Advisory Board
SBA: Small Business Administration

SDWA: Safe Drinking Water Act
SDWIS: Safe Drinking Water Information System
SWTR: Surface Water Treatment Rule
TC: total coliform
TCR: Total Coliform Rule
TCRDSAC: Total Coliform Rule/Distribution System Advisory Committee
TNCWS: transient non-community water system
TT: treatment technique
UMRA: Unfunded Mandates Reform Act
US: United States
UV: Ultra Violet
WHO: World Health Organization
WSG: Water Supply Guidance
WSP: Water Safety Plan

C. Table of Contents

I. General Information
A. Does this Action Apply to Me?
B. Abbreviations Used in This Document
II. Background
A. Legal Authority
B. Purpose of the Rule
C. Scope and Applicability of Rule
D. Regulatory and Enforcement History
III. Final Rule Development
A. Stakeholder Involvement
B. Aircraft Drinking Water Quality
IV. Elements of the Final Aircraft Drinking Water Rule
A. Definitions (§ 141.801)
B. Sampling Requirements (§§ 141.802 and 141.803)
C. Responses to Sample Results (§ 141.803)
D. Restricted Access to the Water System
E. Response to Proposed Rule Requests for Comment
F. Aircraft Water System Operation and Maintenance Plan (§ 141.804)
G. Notification Requirements to Passengers and Crew (§ 141.805)
H. Reporting Requirements (§ 141.806)
I. Recordkeeping Requirements (§ 141.807)
J. Audit and Self-Inspection Requirements (§ 141.808)
K. Violations (§ 141.810)
L. Compliance Date
V. Cost Analysis
A. National Cost Estimates
B. Estimated Impacts of Final ADWR to Air Carrier Passengers
C. Comparison of Costs From Proposed Rule to Final Rule
D. Non-quantified Costs and Uncertainties
VI. Benefits Analysis
VII. 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 That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations or Low-Income Populations
K. Consultations with the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services
L. Plain Language
M. Congressional Review Act
N. Analysis of the Likely Effect of Compliance With the ADWR on the Technical, Financial, and Managerial Capacity of Public Water Systems
VIII. References

II. Background

A. Legal Authority

EPA is finalizing this regulation under the authority of the Safe Drinking Water Act (SDWA), as amended, 42 U.S.C. 300f *et seq.,* primarily sections 1401, 1411, 1412 and 1450. Under SDWA, EPA establishes minimum requirements for tap water provided to the public, known as the national primary drinking water regulations or NPDWRs; these standards are applicable to ''public water systems.'' SDWA section 1401 and EPA's regulations define a ''public water system'' (PWS) as a system for providing water for human consumption to the public through pipes or other constructed conveyances and that regularly serves an average of at least twenty-five individuals daily, at least 60 days per year. 40 CFR 141.2.

All public water systems are subject to the NPDWRs unless they are excluded from regulatory requirements under SDWA section 1411. Section 1411 excludes from regulation any public water system that receives all of its water from another regulated public water system, does not sell or treat the water, and is not a ''carrier which conveys passengers in interstate commerce.'' The classes of interstate carrier conveyances (ICCs) include aircraft, trains, buses, and water vessels. As a result, all ICCs that regularly serve water to an average of at least twenty-five individuals daily, at least 60 days per year are public water systems and are currently subject to existing NPDWRs regardless of whether they treat or sell the water.

EPA's NPDWRs establish different requirements based on the classification of the public water system (water system), including whether the system is a ''community,'' ''non-transient non-community,'' or ''transient non-community'' system, and whether the system uses surface water or groundwater. Aircraft water systems are considered transient non-community water systems (TNCWS) because they are not community water systems and they do not regularly serve an average of at least twenty-five of the same persons over six months per year (see 40 CFR 141.2). Also, aircraft are regulated as surface water systems because they are likely to board finished drinking water from other public water systems that use surface water in whole or in part. EPA considers water for human consumption to include water for drinking and food preparation as well as water for brushing teeth and hand washing (*see* 63 FR 41941; August 5, 1998). Therefore, if an aircraft has a sink in the lavatory, then the water provided to that sink must be suitable for human consumption.

B. Purpose of the Rule

The primary purpose of the ADWR is to ensure that safe and reliable drinking water is provided to aircraft passengers and crew. This entails providing air carriers with a feasible and effective way to comply with SDWA and the NPDWRs. Due to the unique characteristics of aircraft water systems and demonstrated implementation challenges, EPA developed a new NPDWR specifically tailored to aircraft water systems, the Aircraft Drinking Water Rule (ADWR).

The ADWR has been developed to protect against disease-causing microbiological contaminants or pathogens through the required development and implementation of aircraft water system operation and maintenance plans that include best management practices, air carrier training requirements, and periodic sampling of the onboard drinking water.

C. Scope and Applicability of Rule

This final rule only addresses aircraft regulated under SDWA. SDWA does not regulate aircraft water systems operating outside the U.S.; however, EPA is supporting an international effort led by the World Health Organization (WHO) to develop international guidelines for aircraft drinking water. The final rule applies to the onboard water system only. EPA defers to the United States Food and Drug Administration (FDA) with respect to regulating watering points such as water cabinets, carts, trucks, and hoses from which aircraft board water.

EPA assumes that only finished water is boarded for human consumption on aircraft. Finished water means water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system (*e.g.*, supplemental disinfection, addition of corrosion control chemicals) (40 CFR 141.2). The assumption that only finished water is boarded on aircraft is

based on an FDA requirement that only potable water may be provided for drinking and culinary purposes on interstate carrier conveyances (ICCs) (21 CFR 1240.80). However, aircraft water systems that are boarding water that is not finished water will continue to be subject to existing NPDWRs.

FDA requirements cover all ICC watering points (21 CFR 1240.83 (a)), (1) to ensure the water supply meets EPA's NPDWRs and (2) to ensure the methods (i.e., water transfer process) of and facilities (e.g., water cabinets, carts, trucks, containers, and hoses) for delivery of such water to the conveyance and the sanitary conditions surrounding such delivery prevent the introduction, transmission, or spread of communicable diseases. FDA requirements for watering points do not entail the individual certification of every potential source, method, facility, or system; however, ICC selected watering points must be in accordance with FDA requirements (21 CFR part 1240, subpart E).

Aircraft that do not provide water for human consumption or those with water systems that do not regularly serve an average of at least twenty-five individuals daily at least 60 days out of the year do not meet the definition of a public water system; these aircraft are not regulated under the NPDWRs or regulated under this final ADWR. EPA also does not regulate under SDWA water systems that only serve water outside the U.S. On the April 9, 2008, proposed ADWR, EPA received public comment as to the applicability of the ADWR to aircraft water systems based on ownership (e.g., foreign carrier, U.S. military). The final rule clarifies that the applicability of the ADWR is not based on ownership, but on the determination as to whether the aircraft water system is operating within the U.S., meets the definition of a public water system (PWS) under SDWA section 1401, and is not excluded from regulation under SDWA section 1411. An aircraft is not considered a public water system if it does not regularly serve an average of at least twenty-five individuals daily at least 60 days out of the year. The ADWR applies to aircraft (regardless of ownership) that fly routes between two or more locations within the U.S., while the aircraft is within U.S. jurisdiction. For instance, an aircraft flying an international route that serves only one U.S. location would not generally be considered a PWS. Another example is an aircraft that is used solely for military purposes, is not conveying passengers in interstate commerce, and meets all of the other exclusion criteria under SDWA section 1411; in this case, the aircraft would also be excluded from regulation under the NPDWRs and the ADWR.

An estimated 63 air carriers and 7,327 aircraft water systems are regulated by this rule.

D. Regulatory and Enforcement History

SDWA, including the amendments of 1986 and 1996, requires EPA to promulgate NPDWRs to prevent tap water contamination that may adversely affect human health. As previously noted, aircraft are subject to certain NPDWRs specific to TNCWS. EPA published Water Supply Guidance 29 (WSG 29) in October 1986 to assist ICC operators, including air carriers, in complying with these standards (USEPA, 1986). Since then, EPA has determined that a new rule, the ADWR, specifically adapted to aircraft water systems would provide a clearer and more implementable regulatory framework for aircraft water systems. EPA suspended WSG 29 in 2003 and is no longer approving operation and maintenance programs in lieu of monitoring.

As discussed in the preamble to the proposed rule (73 FR 19323, April 9, 2008), in 2004, EPA found all aircraft water systems to be out of compliance with the NPDWRs. According to the air carriers, it is not feasible for them to comply with all of the monitoring that is required under the existing regulations. Subsequently, EPA tested 327 aircraft, of which 15 percent tested positive for total coliform. In response to these findings, EPA embarked on a process to tailor the existing regulations for aircraft water systems. In the interim, EPA placed 45 air carriers under Administrative Orders on Consent (AOCs) that will remain in effect until 24 months following publication of the final rule.

The ADWR adapts to aircraft water systems the applicable requirements from the Total Coliform Rule (TCR), the suite of surface water treatment regulations, and the Public Notification Rule.

The Total Coliform Rule (TCR) (USEPA, 1989) applies to all public water systems. Because monitoring water systems for every possible pathogenic organism is not feasible, coliform organisms are used as indicators of possible source water and distribution system contamination. Coliforms are easily detected in water and are used to indicate a water system's source and distribution system vulnerability to pathogens. In the TCR, EPA sets a Maximum Contaminant Level Goal (MCLG) of zero for total coliforms. EPA also sets a monthly Maximum Contaminant Level (MCL) for total coliforms and requires testing of total coliform-positive cultures for the presence of fecal coliforms or *E. coli.* Fecal coliforms or *E. coli* indicate more immediate health risks from sewage or fecal contamination and are used as an indicator of acute contamination. In addition, the TCR requires sanitary surveys (i.e., onsite review of the water source, facilities, equipment, operation and maintenance of a PWS for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water). The TCR requires sanitary surveys by the State primacy agency every five years for systems that collect fewer than five total coliform samples per month (those serving 4,100 people or fewer). A TNCWS using surface water serving less than 1,000 individuals daily would typically be required to take one total coliform sample per month for routine sampling requirements.

Under the Public Notification Rule, public water systems must give notice to persons served by the water system for violations of NPDWRs and for other situations posing a risk to public health from drinking water. The term ''NPDWR Violations'' is used in the public notification regulations to include violations of the MCL, Maximum Residual Disinfectant Level (MRDL), treatment technique (TT), monitoring, and testing procedure requirements. Public notice requirements are divided into three tiers, which take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. Due to the transient nature of the public served by TNCWSs, public notice is typically provided through posting of the notice at locations where the public may access drinking water from the water system.

In addition to the EPA requirements, air carriers have many different on-going programs and practices for assessing and correcting deficiencies and risks associated with the drinking water supply and related safety, security, and sanitation issues. For example, such programs and practices include FAA Airworthiness Standards: Transport Category Airplanes (airworthiness maintenance and inspection program) (14 CFR part 43, 14 CFR part 91, and 14 CFR part 121); vulnerability assessments/security programs; FDA regulations for Interstate Conveyance Sanitation (USFDA, 2005); FDA sanitary surveys of watering points and servicing areas; and FDA requirements of aircraft sanitation systems including potable (finished)

water, sewage, and galleys. These programs may contribute valuable information related to the condition of the aircraft water system and water quality. Throughout the rule's development, EPA has worked closely with FDA and FAA to ensure that the ADWR is integrated with these programs to avoid unnecessary duplication.

III. Final Rule Development

A. Stakeholder Involvement

As discussed in the proposed ADWR, EPA announced in 2004 that it had initiated a rulemaking process to develop regulations for aircraft water systems. (73 FR 19324, April 9, 2008). The Agency committed to working collaboratively with other Federal agencies (*e.g.,* FDA and FAA) overseeing the air carrier industry, industry representatives, and interested stakeholders to identify appropriate requirements to ensure safe drinking water onboard aircraft. This collaborative rule development process has allowed EPA an opportunity to obtain information from, and hear the concerns and questions of, stakeholders who would be affected by this rule in an organized and formal process prior to development of this final ADWR.

EPA held three public meetings: These were held in June 2005, January 2006, and March 2007. All three events were well-attended by stakeholders representing a diverse group of interests including air carriers, airports, flight attendants, pilots, passengers, public health officials, environmental groups, States, public water systems, water treatment and equipment vendors, laboratories, foreign government agencies, and other Federal agencies. This pre-proposal input greatly assisted EPA in the rule's development.

EPA proposed the ADWR on April 9, 2008 (73 FR 19320), and requested public comment. The ADWR adapts to aircraft water systems the applicable requirements from the Total Coliform Rule, the suite of surface water treatment regulations, and the Public Notification Rule. EPA received comments on the proposal and has made revisions to this final rule that increases regulatory flexibility and adaptability to the airline industry's operations, while ensuring public health protection. Section IV of this notice describes how EPA incorporated public comments into revisions to the final rule. A Response to Comments Document is available in the docket for today's action.

B. Aircraft Drinking Water Quality

1. Data Collection Efforts

To better understand aircraft drinking water quality, EPA analyzed sampling results submitted by air carriers under Administrative Orders on Consent (AOCs) from 2005–2008. As detailed in the proposed ADWR, EPA also drew upon the results of the following three studies: (1) A voluntary monitoring study completed by the Air Transport Association (ATA) in Fall 2003; (2) an EPA study of aircraft NPDWR compliance completed in 2004; and (3) the Canadian Inspection Program monitoring results completed in 2006 (73 FR 19324).

The AOCs established interim aircraft water testing and disinfection protocols. As part of the AOCs' requirements, air carriers were required to submit two documents for EPA approval, which set the stage for monitoring and disinfection protocols/procedures: A Comprehensive Representative Monitoring Plan (CRMP) and a Quality Assurance Project Plan (QAPP). The CRMP describes the air carrier's sampling and disinfection processes and protocols for collecting samples within a 12-month period. The QAPP describes the air carrier's Quality Assurance/Quality Control processes to ensure good quality data. As reflected in Table III–1, air carriers followed slightly different monitoring and disinfection protocols based on their fleet size.

TABLE III–1—MONITORING AND DISINFECTION PROTOCOLS AS REQUIRED UNDER THE AOCS

	Air carriers with greater than 20 aircraft	Air carriers with less than or equal to 20 aircraft
MONITORING: [1]		
For each sample event, collect at least one sample from a galley and one from a lavatory for total coliform and disinfectant residual (total residual chlorine)	✓	✓
Sample 25% of fleet quarterly	✓	.....
Sample all fleet quarterly	.....	✓
DISINFECTING AND FLUSHING: [2]		
Disinfect and flush each aircraft's water system no less than quarterly	✓	✓
Disinfect and flush watering points (e.g., water trucks, carts, cabinets, hoses) no less than monthly	✓	✓

[1] The air carrier was required to use State- or EPA-certified laboratories and EPA-approved analytical methods for analyzing drinking water samples.

[2] If the air carrier had a pre-AOCs monitoring and disinfecting program requiring a higher frequency, the air carrier was required to continue in accordance with their program, unless modification was requested and approved by EPA.

2. Microbiological Occurrence for the Estimated Baseline

As of December 31, 2008, EPA has processed drinking water sampling data from 25 of the 45 air carriers under the AOCs. From these 25 air carriers, EPA processed a total of 20,156 total coliform samples (13,872 routine and 6,284 repeat) and 17,267 chlorine residual samples. These 25 air carriers represent 78 percent of the total estimated AOCs' fleet size (5,558 aircraft) and 79 percent of the total expected annual number of routine samples. However, data for air carriers with an EPA-approved QAPP and CRMP are only available from 2 air carriers in 2005, 5 air carriers in 2006, 8 air carriers in 2007, and 12 air carriers in 2008.

The following data summaries are from air carriers with an EPA-approved QAPP and CRMP. As noted above, not all 25 air carriers provided data collected under an EPA-approved QAPP and CRMP for all four years. Therefore, insufficient data are currently available to support statistical evaluation of the data sets. However, the data were used to provide an observational indication of trends. It should be noted that total coliform repeat samples by nature have a higher probability of being positive since repeat samples are taken after a routine sample is total coliform-positive. Consequently, the occurrence baseline for total coliform and *E. coli*/

fecal coliform occurrence was based on routine samples only. Table III–2 presents data for routine total coliform samples collected under EPA-approved QAPPs and CRMPs.

Of the total 20,156 total coliform samples received, 93 percent or 18,724 samples (12,794 routine and 5,930 repeat samples) were from air carriers with an EPA-approved QAPP and CRMP. Of the 12,794 routine samples, 3.6 percent (463 samples) were positive for total coliform and 3.9 percent (18 samples) of the total coliform-positive samples were *E. coli*/fecal coliform-positive. Of the 463 total coliform-positive routine samples, 413 were collected in the lavatory, 47 were collected in the galley, and one was a composite sample of galley and lavatory sources; the location of the remaining two positive results are unknown. Although the lavatory samples had a higher total coliform-positive occurrence rate (5.9 percent, or 413 of 7,027 lavatory samples) than the galley samples (0.8 percent, or 47 of 5,695 galley samples), the galley samples had a higher *E. coli*/fecal coliform occurrence of 12.8 percent (6 of 47 total coliform-positive samples), compared to 2.9 percent (12 of 413 total coliform-positive samples) in the lavatories. More details on the routine coliform data set by calendar quarter and by sample collection location on the aircraft are presented in the following table (Table III–2).

TABLE III–2—AOCS OCCURRENCE BASELINE DATA—ROUTINE TOTAL COLIFORM SAMPLES OF AIR CARRIERS WITH EPA-APPROVED QAPPS AND CRMPS (YEARS 2005–2008)

	Percent TC+	Of the TC+ samples, percent EC+ or FC+	Total # of TC+ samples	Total # of TC+ samples that are EC+ or FC+	Total # of TC samples
Total Coliform Data by Calendar Quarter					
Calendar Qtr 1	3.2	4.0	100	4	3,145
Calendar Qtr 2	3.5	3.5	198	7	5,641
Calendar Qtr 3	4.1	0.0	79	0	1,930
Calendar Qtr 4	4.1	8.1	86	7	2,078
Total	3.6	3.9	463	18	12,794
Total Coliform Data by Sample Location					
Galley	0.8	12.8	47	6	5,695
Lavatory	5.9	2.9	413	12	7,027
Composite*	14.3	0	1	0	7
Unknown Sample Site	3.1	0	2	0	65
Total	3.6	3.9	463	18	12,794

* Composite sample of Galley and Lavatory sources.
Note: ''TC+'' means total coliform-positive; ''EC+ or FC+'' means E. coli-positive or fecal coliform-positive.
Note: For air carriers with EPA-Approved QAPPs and CRMPs (Years 2005–2008), out of a total number of 12,794 routine samples, a total of 18 samples (0.14%) were EC+ or FC+.

3. Residual Chlorine Estimated Baseline

Table III–3 presents data for disinfectant residual samples collected under EPA-approved QAPPs and CRMPs during routine and repeat total coliform sampling events. Of the 18,724 routine and repeat total coliform sample events reported, 16,109 disinfectant residual sample results were also reported. Results were reported as either ''detect'' with the residual value recorded, or ''non-detect.'' Disinfectant residual data were not provided for 2,615 coliform sample events. Disinfectant residual data are presented for the total of routine and repeat sample collection events because repeat samples have no higher or lower probability of having a detectable residual than routine samples.

For air carriers with approved QAPPs and CRMPs, approximately 18.2 percent (2,927 samples) of the 16,109 disinfectant residual results processed from 2005 to 2008 had a non-detectable disinfectant residual. Non-detectable levels were similar in galleys (17.3 percent) and lavatories (18.9 percent), while 22.4 percent (73 out of 326 samples) of the composite samples were non-detects. A sample location was not identified for 13 samples with a detectable residual. While not statistically significant, the occurrence of non-detectable disinfectant residuals appeared to increase in months with warmer weather. Quarter 3 (*i.e.,* July to September) had the highest percentage of samples with a non-detectable disinfectant residual (30.2%), although as shown in Table III–2, Quarter 3 routine total coliform sample results showed no appreciable increase in the percentage of coliform-positive samples.

TABLE III–3—AOCS OCCURRENCE BASELINE DATA—DISINFECTANT RESIDUAL ROUTINE AND REPEAT SAMPLES OF AIR CARRIERS WITH EPA-APPROVED QAPPS AND CRMPS (YEARS 2005–2008)

	Percent disinfectant residual non-detect	Total # of disinfectant residual non-detect	Total # of disinfectant residual detect	Total # of disinfectant residual samples
Disinfectant Residual Data by Calendar Quarter				
Unknown Calendar Qtr	0	0	0	0
Calendar Qtr 1	22.8	864	2,933	3,797

TABLE III–3—AOCs OCCURRENCE BASELINE DATA—DISINFECTANT RESIDUAL ROUTINE AND REPEAT SAMPLES OF AIR CARRIERS WITH EPA-APPROVED QAPPs AND CRMPs (YEARS 2005–2008)—Continued

	Percent disinfectant residual non-detect	Total # of disinfectant residual non-detect	Total # of disinfectant residual detect	Total # of disinfectant residual samples
Calendar Qtr 2	9.3	632	6,128	6,760
Calendar Qtr 3	30.2	813	1,879	2,692
Calendar Qtr 4	21.6	618	2,242	2,860
Total	18.2	2,927	13,182	16,109
Disinfectant Residual Data by Sample Location				
Galley	17.3	1,336	6,386	7,722
Lavatory	18.9	1,518	6,530	8,048
Composite *	22.4	73	253	326
Unknown Sample Site	0.0	0	13	13
Total	18.2	2,927	13,182	16,109

* Composite sample of Galley and Lavatory sources

It appears that a non-detectable disinfectant residual is not associated with an increase in total coliform-positive samples. Of the 801 total routine and repeat samples that were total coliform-positive, 24 did not include any data on a disinfectant residual. Of the remaining 777 total coliform-positive routine and repeat samples, 584 samples (75 percent) had a detectable disinfectant residual and 193 samples (25 percent) did not have a detectable disinfectant residual. Twenty-one (3.6 percent) of the 584 total coliform-positive routine and repeat samples with a detectable residual (the lowest measuring 0.05 mg/L) also tested positive for *E. coli*/fecal coliforms. Only one (0.5 percent) of the 193 total coliform-positive samples did not have a detectable residual and tested positive for *E. coli*/fecal coliforms.

Seventy-three samples had non-detectable disinfectant residual and were reported to have carbon filters installed on the water lines to the sample tap; two of those samples were total coliform-positive. For comparison, 364 samples with detectable disinfectant residual were reported to use carbon filters; three of those samples were total coliform-positive. Aside from charcoal/carbon, and particle removal filters in some galleys and lavatories, the majority of aircraft do not provide additional treatment for boarded water.

For more details on aircraft drinking water sample results under the AOCs, *see* Chapter 3 and Appendix B of the *Economic and Supporting Analyses for the Final ADWR.*

IV. Elements of the Final Aircraft Drinking Water Rule

The following sections describe the elements of the final rule as developed by EPA. EPA specifically designed the rule to allow air carriers to be consistent with the manufacturer recommendations for disinfecting and flushing aircraft water systems, instead of prescribing the frequency, chemical type and concentration to be used. By allowing air carriers to be consistent with the manufacturer recommendations for disinfection and flushing, the rule requirements will automatically evolve with technological improvements in aircraft water tank lining and piping materials, and as new more effective disinfectants are developed.

EPA requested comment on all aspects of the rule in its proposal of April 9, 2008 (73 FR 19320); however, EPA did not request and did not consider comments on any aspect of the TCR, surface water treatment regulations, Public Notification Rule, or any other NPDWR other than as applied to aircraft water systems in the proposed rule. In addition to rule requirements, EPA identified specific requests for comment on subject matters pertaining to the proposed rule. The public comment period for the April 9, 2008, proposed ADWR closed on July 8, 2008. The following sections of this preamble explain the final rule and present, when applicable, a summary of the major public comments received. In addition, EPA has responded to all of the public comments in its Response to Comment document, which can be found in the docket for this rule (*see* **ADDRESSES** of this notice to obtain information on accessing the docket).

A. Definitions (§ 141.801)

All definitions included in the proposed rule (73 FR 19343), remain the same in today's final rule except for the definitions for *Aircraft Water System Operations and Maintenance Plan* and *Watering Point.*

In the proposed rule, the definition for *Aircraft Water System Operations and Maintenance Plan* reads, ''*Aircraft Water System Operations and Maintenance Plan* means the schedules and procedures for operating, monitoring, and maintaining an aircraft water system that is included in an aircraft operations and maintenance program approved or accepted by the Federal Aviation Administration (FAA).'' Since the publication of the proposed rule, the Agency has learned that FAA does not ''approve'' the air carrier operations and maintenance programs, and that describing these programs as ''FAA-accepted'' programs is more accurate. Thus, in the final rule, EPA removes the word ''approved'' from the definition.

In the proposed rule, the definition for *Watering Point* reads, ''*Watering Point* means a facility where finished water is transferred from a water supply to the aircraft. These facilities may include water trucks, carts, cabinets, and hoses.'' However, the Agency received comments concerning selection of watering points in § 141.804. The commenters (details under Section IV. F of this notice) believed that EPA intended to alter Food and Drug Administration (FDA) regulations applicable to watering points. EPA did not intend to alter these regulations, and clarifies in today's final rule that it is the Agency's intent to keep the rule consistent with existing FDA regulations. Thus, the Agency is revising the definition for *Watering Point* to read, ''Watering Point means

the water supply, methods, and facilities used for delivery of finished water to the aircraft. These facilities may include water trucks, carts, cabinets and hoses.''

B. Sampling Requirements (§§ 141.802 and 141.803)

This section begins with a summary of the major sampling requirements of the final ADWR, then addresses public comments received on the proposed ADWR related to changes EPA has made to the final rule requirements. Finally, EPA provides responses to the ''Request for Comment'' issues posed in the proposal designed to aid the Agency in developing requirements under the final ADWR.

In keeping with the TCR, today's rule reiterates that air carriers need only determine the presence or absence of total coliforms in water samples collected from aircraft water systems; a determination of total coliform density is not required. In addition, this final rule specifies that only analytical methodologies approved by EPA are to be used for sample analysis. For routine total coliform monitoring, each aircraft water system water sample must be 100 mL. For most systems, one sample must be collected from a lavatory and one sample from a galley. Each sample must be analyzed for total coliforms. If total coliforms are detected, the sample must further be analyzed for *E. coli.* Under this rule, *E. coli* is the indicator that fecal contamination may have occurred. If only one water tap is located in the aircraft water system due to aircraft model type and construction, then a single tap may be used to collect two separate 100 mL samples to be analyzed for total coliforms. If an aircraft water system has a removable/portable tank, that is drained at least every day of passenger service and there is one tap on the aircraft, the air carrier may collect one 100 mL sample from the available tap (*i.e.,* galley or lavatory).

1. Coliform Sampling Plan (§ 141.802)

EPA proposed to allow six months for air carriers to develop a coliform sampling plan for each aircraft following publication of the rule. However, the Agency received several comments requesting that the compliance date be extended in order to allow more time for air carriers to restructure maintenance programs between the AOCs and the final rule. The comments and the Agency's response are explained in more detail in section IV. L of this notice. EPA agrees that more time may be needed for air carriers to develop a coliform sampling plan. Therefore, today's final rule extends the compliance date for development of the coliform sampling plan to 18 months after publication of the final rule.

Under the proposed and final rules, an air carrier must develop a coliform sampling plan for each aircraft water system it owns and operates. The coliform sampling plan must be included in the Aircraft Water System Operations and Maintenance Plan required in § 141.804. The air carrier need not develop a separate coliform sampling plan for each aircraft, but the air carrier must ensure that each aircraft it owns and operates is covered by a plan. For example, if the air carrier operates several of the same type of aircraft water system with the same coliform sampling frequency, procedures, sampling tap locations, etc., the air carrier may choose to develop one coliform sampling plan that applies to all aircraft of this type in the air carrier's fleet.

While most of the sampling plan requirements are the same in the proposed and final rules, the Agency received comments that the proposed rule was unclear as to whether and how air carriers could amend their operations and maintenance plans or their coliform sampling plans. EPA agrees that the final rule should more clearly state the requirements for making changes to these plans. Thus, in the final rule, EPA addresses this concern by clarifying that any subsequent changes to the coliform sampling plan must also be included in the Aircraft Water System Operations and Maintenance Plan. Changes to the coliform sampling plan could include changes to any of the requirements listed in this section, including changes to the frequency of routine coliform sample collection. In addition, both the reporting requirements and the requirements for the operations and maintenance plan have been revised to respond to these comments.

2. Coliform Sampling Requirements (§ 141.803)

In the proposed rule, all air carriers would be required to collect the same volume and number of samples regardless of aircraft size:

- For routine samples—collect two 100 mL samples: one from a lavatory and one from a galley. If only one tap is available—collect two ''separate'' 100 mL samples.
- For repeat samples—collect four 100 mL samples: one from the positive tap, one other lavatory, one other galley, and one other tap. If less than four taps are available—collect four 100 mL samples from the available taps.

In the proposed rule, routine sampling frequencies were based on the routine disinfection and flushing frequency as detailed in the following table (Table IV–1):

TABLE IV–1—PROPOSED RULE REQUIREMENTS FOR ROUTINE DISINFECTION AND FLUSHING AND SAMPLING

Disinfection & flushing frequency per aircraft PWS	Coliform sampling frequency per aircraft PWS
Once per Quarter (4 times per year).	Annually.
Once to 3 times per year.	Quarterly.
Less than once per year.	Monthly.

If *not* specified by the manufacturer, disinfection and flushing must be no less frequent than once per quarter.

Public comments on the proposed rule raised several concerns related to (1) the lavatory as a sampling location site, and (2) the routine frequencies for disinfection and flushing, and coliform monitoring. EPA received several public comments regarding the elimination of lavatory samples. Several commenters stated that lavatory sampling should be eliminated because it is not representative of the water actually consumed for drinking purposes on aircraft and, requiring the sampling of lavatories mischaracterizes risks unless (1) there are no other sampling locations available on the aircraft; and/or (2) the airline takes affirmative steps to offer water in the lavatories for drinking purposes, such as providing drinking cups. EPA disagrees with these comments. In today's rule, air carriers must collect a total coliform sample from one galley and one lavatory, when available. Collection of samples from the lavatory is necessary since this water may be used for human consumption (*e.g.*, brushing teeth, hand washing). Additionally, lavatory samples are as representative of the aircraft drinking water quality as galley samples when proper collection techniques/procedures are used to minimize the frequency of positive results due to surface contamination or improper collection procedures. EPA plans to discuss these issues further in its separate ADWR technical guidance.

EPA received the following two major comments regarding routine disinfection and flushing, and coliform monitoring frequencies: (1) Reduce the sample collection for small volume aircraft water systems (*e.g.*, regional jets with 5-gallon removable tanks), and (2)

extend the minimum disinfection intervals to accommodate for less frequent disinfection based on sampling results.

With respect to sampling number and volume, commenters expressed concern that the proposed ADWR was unduly complicated (*e.g.*, number of total coliform samples collected was too much) for small tanks (*e.g.*, regional jets with 5 gallons) that are removable/portable and are drained daily; and that the rule does not account for varying sizes of aircraft. EPA agrees with the comments regarding aircraft with small drinking water tanks and today's rule incorporates the following changes:

- For aircraft water systems that have a removable/portable drinking water tank that is drained every day of passenger service, and the aircraft has only one tap, air carriers may collect one 100 mL routine sample from the available tap; and
- Collect three 100 mL repeat samples when performing the corrective action upon the receipt of a total coliform-positive sample. This reduction in repeat samples also applies to all tank types.

EPA believes these reductions are appropriate because the complexity of aircraft water systems with removable/portable tanks and one tap on the aircraft is low (*e.g.*, few feet of tubing/pipes; few potential points for cross contamination); and the reductions maintain consistency with the recommendations of the Federal Advisory Committee—The Total Coliform Rule/Distribution System Advisory Committee (TCRDSAC)—to reduce sampling volume and frequency for small non-community stationary systems (see docket for the TCRDSAC Agreement in Principle, signed September 18, 2008). EPA also believes that the economic and logistical burden on air carriers, particularly small regional jets, will be minimized by taking fewer samples.

Public comment on the proposed ADWR disinfection and flushing, and monitoring frequencies centered around two main issues: (1) Extend the minimum disinfection intervals to accommodate an approach that focuses on risk and allows for less frequent disinfection based on sampling results, and (2) set ''reasonable minimum'' disinfection timelines consistent with the AOCs of some major air carriers to align a semi-annual disinfection schedule with an annual sampling schedule, thereby reducing the ''significant'' economic cost to restructure in-place disinfection programs. EPA agrees that some changes are warranted and today's rule includes revised requirements to the routine frequencies as presented in Table IV–2:

TABLE IV–2—FINAL RULE REQUIREMENTS FOR ROUTINE DISINFECTION AND FLUSHING AND ROUTINE SAMPLING FREQUENCIES

Minimum routine disinfection & flushing per aircraft	Minimum frequency of routine samples per aircraft
At least 4 times per year = At least once within every three-month period (quarterly).	At least 1 time per year = At least once within every twelve-month period (annually).
At least 3 times per year = At least once within every four-month period.	At least 2 times per year = At least once within every six-month period (semi-annually).
At least 2 times per year = At least once within every six-month period (semi-annually).	At least 4 times per year = At least once within every three-month period (quarterly).
At least 1 time per year or less = At least once within every twelve-month period (annually) or less.	At least 12 times per year = At least once every month (monthly).

If not specified by the manufacturer, select any frequency that is no less stringent than these four disinfection and flushing frequencies which meet the aircraft's unique operational needs.

EPA considers disinfection and flushing to be a more protective and pro-active public health measure than monitoring. Therefore, EPA re-aligned the disinfection and flushing and monitoring frequencies in order to emphasize the importance of disinfection and flushing in comparison to monitoring. As a result, those air carriers that conduct more frequent disinfection and flushing do not have to monitor as frequently. Today's final rule requires an air carrier that conducts disinfection and flushing three times per year to perform sampling twice a year instead of four times per year. And an air carrier that conducts disinfection and flushing once per year or less must sample monthly. With respect to the commenter's concern about accommodating a semi-annual disinfection and flushing frequency with annual sampling (as allowed under some AOCs), the ADWR continues to accommodate the semi-annual disinfection and flushing schedule. However, EPA believes that linking this with annual sampling would be inconsistent with the importance of disinfection and flushing as the preferred, pro-active measure. As reflected in Table IV–2, today's rule continues to require air carriers that conduct disinfection and flushing semi-annually to conduct monitoring four times per year.

While the frequencies in Table IV–2 provide air carriers with enough flexibility to schedule both routine disinfection and flushing and routine monitoring in a way that avoids disruption to passenger service, EPA intends for air carriers to schedule routine disinfection and flushing and routine monitoring at regular intervals throughout the calendar year. Routine disinfection and flushing should be scheduled so that the amount of time between each disinfection and flushing event is approximately equal. EPA believes that this will maximize the effectiveness of the disinfection and flushing event. Similarly, routine monitoring should be scheduled so that the amount of time between each monitoring event is approximately equal. EPA does not intend for routine disinfection and flushing events to take place back-to-back such that disinfection and flushing occurs at the end of one disinfection and flushing period and again at the beginning of the following period. Nor should air carriers schedule routine monitoring events to take place back-to-back such that samples are taken at the end of one monitoring period and again at the beginning of the following period.

In addition, the Agency received comment that the requirement to disinfect and flush quarterly, when no manufacturer recommendations were available, did not provide flexibility. In today's rule, EPA removed this requirement (as reflected in Table IV–2) so that when there is no manufacturer recommendation, air carriers can select any of the routine frequencies that best

meet their unique operations and maintenance needs.

EPA was unable to make a determination on a risk-based approach that supports a reduced frequency for disinfection and flushing based on sampling results, because no new data were provided beyond the AOCs' data. The AOCs' data protocols were not designed to establish risk-based frequencies. AOCs are interim measures used to aid air carriers to meet compliance with SDWA and provide an understanding of aircraft drinking water quality. At this time, EPA believes the final rule frequencies provide the minimum requirements necessary for public health protection, while also providing adequate flexibility to meet the evolving needs of the industry, such as transitioning from the AOCs' requirements to the ADWR.

3. Analytical Methods (§ 141.803(a))

In the proposed rule, EPA stated that air carriers must use EPA-approved analytical methodologies for the analysis of coliform bacteria. Public comment was received regarding the specific use of concurrent analytical methods that test for total coliforms and E. coli simultaneously. The commenter named several concurrent methods that they felt provide ''great benefit'' to the industry, because the methods are timely and accurate. Although some of these noted methods are EPA-approved, the final rule reiterates and clarifies that air carriers must use only the EPA-approved analytical methods for analyzing total coliforms and/or *E. coli* in drinking water samples as specified in § 141.21(f)(3) and § 141.21(f)(6) of the *Code of Federal Regulations*, or their equivalent as approved by EPA to demonstrate compliance with the ADWR sampling requirements. EPA has approved several methods for use that allow the simultaneous detection of both total coliforms and *E. coli.* These methods are also approved for use under this rule.

In the proposed rule, EPA required air carriers to use a State- or EPA-certified laboratory for analysis of drinking water samples. For compliance with the ADWR, one commenter encouraged EPA to allow the use of foreign laboratories to conduct analysis on drinking water samples as permitted under the Administrative Orders on Consent (AOCs). In addition, the commenter noted that air carriers should be allowed to conduct disinfection of their aircraft water systems ''at locations outside the U.S.'' The final rule clarifies and reiterates that drinking water microbiological samples submitted for compliance with the ADWR must be analyzed by a certified laboratory to ensure the use of approved analytical methods and approved quality control procedures for checking analytical data for completeness and correctness. A certified laboratory is a laboratory that is certified by EPA or a State. ''State'' refers to a U.S. State or Tribe that has received primacy for public water systems (other than aircraft water systems) under section 1413 of the SDWA. By allowing the use of any laboratory that is certified by a State or EPA for analysis of drinking water samples, the ADWR provides air carriers with greater flexibility in designing their sampling programs while maintaining protection of public health.

In one AOC, for a specific set of the fleet (i.e., 47 aircraft) an air carrier was permitted to use a foreign laboratory, which was neither EPA- nor State-certified, to perform analysis of drinking water samples provided that the samples were analyzed using EPA-approved analytical methods. The commenter incorrectly assumed that this allowance would fulfill SDWA compliance. In today's notice, the Agency makes clear that this allowance was not intended for compliance purposes under the SDWA. The ADWR does not prevent collection of samples outside the U.S. However, foreign laboratories must be an EPA- or a State-certified laboratory in order to analyze the drinking water samples for compliance with the ADWR. EPA plans on addressing these issues in more detail in its ADWR technical guidance. EPA notes that the ADWR requirements do not prevent air carriers from performing disinfection and flushing outside the U.S. for compliance with the ADWR.

C. Responses to Sampling Results (§ 141.803)

As specified in the proposed rule, air carriers would need only determine the presence or absence of total coliforms in water samples collected from aircraft water systems; a determination of total coliform density would not be required. Under the proposal, upon receipt of a total coliform-positive result, air carriers would be required to further analyze the positive sample for the presence of fecal coliforms, except that the system could test for *E. coli* in lieu of fecal coliforms. EPA received public comment requesting the removal of fecal coliforms as indicators. EPA agrees with this comment and today's rule eliminates the use of fecal coliforms as indicators of potential fecal contamination. As a consequence, the final rule specifies that upon receipt of a total coliform-positive result, air carriers must further analyze that sample for *E. coli* only. The fecal coliform group (also referred to as thermotolerant coliforms) has been found to sometimes contain environmental bacteria that are not of fecal origin. Thus, the presence of fecal coliform bacteria in a water sample is not necessarily indicative of the potential for fecal contaminants being present. Thus, analyzing for *E. coli* provides more meaningful data to protect public health. This change is consistent with the recommendations of the Federal Advisory Committee—TCRDSAC.

In the proposed rule, air carriers would be required to perform the following corrective actions based on a positive coliform result:

(1) If one routine sample was total coliform-positive and *E. coli*/fecal coliform-negative then the air carrier would be required to:

- Within 72 hours of receipt of the positive result from the laboratory, disinfect and flush the water system, and collect follow-up samples; or
- Within 24 hours of receipt of the positive result from the laboratory, collect four repeat samples.

(2) If two or more routine samples or any repeat samples were total coliform-positive and *E. coli*/fecal coliform-negative, or if any sample was *E. coli*/fecal coliform-positive then the air carrier was required to:

- Within 24 hours of receipt of the positive result from the laboratory, restrict public access. Restrict public access included the following activities for the aircraft in question: Physically disconnect or shut-off the water system where feasible; provide public notification to passengers and crew if the water system could not be shut-off, but if the system could be shut-off, then provide public notice to the crew only; and provide alternatives to the use of the water system such as antiseptic alcohol-based hand gels or wipes and bottled water (that reduce or eliminate the need to use the water system during the limited period before access is restored); and
- Within 72 hours of receipt of the positive result from the laboratory, disinfect and flush the water system and collect follow-up samples if the system could not be physically disconnected or shut-off. If the water system could be shut-off to prevent access to passenger and crew, disinfect and flush when able.

Public comment on the proposed ADWR noted several concerns related to the corrective actions upon receipt of a positive coliform result. Commenters stated that the proposed ADWR lacked flexibility to avoid passenger and

airspace disruptions that may occur when an aircraft cannot be pulled out-of-service to disinfect and flush in 72 hours (*e.g.*, if results are received during an international flight). Commenters recommended EPA increase the timeframe from 72 hours to 96 or 120 hours to avoid inconveniencing travelers (due to delays, cost, or loss of service). Additionally, commenters stated that an aircraft should not be grounded ''solely'' for a problem associated with the aircraft water system. EPA agrees that some flexibility is warranted to avoid unnecessarily grounding the aircraft, and for the final rule, better aligned the corrective actions so that non-fecal microbiological occurrences have the same corrective actions regardless of the number of samples that test total coliform-positive and *E. coli*-negative.

Generally, most members of the total coliform bacterial group do not pose a risk to human health. The presence of total coliforms only (i.e., no *E. coli* are detected) presents a non-fecal potential health risk and is an indication of poor water quality that could be caused by stagnant water, a failure of treatment equipment intended to improve the aesthetic quality of the water (such as carbon filters) or inadequate routine maintenance of the water system, among others. However, EPA considers that an *E. coli*-positive result is an acute potential fecal health risk, and it is a necessary public health measure to ground the plane in 72 hours when the water system cannot be physically disconnected or the flow of water prevented through the taps. Therefore, no changes were made to the corrective actions for *E. coli*-positive results.

The final rule reflects corrective action changes to non-fecal coliform occurrence when an air carrier receives a total coliform-positive result that is also *E. coli*-negative. These changes are also consistent with recommendations of the Federal Advisory Committee—TCRDSAC for stationary systems under the Total Coliform Rule, whereby the occurrence of routine total coliform-positive results that are *E. coli*-negative should not be considered a maximum contaminant level (MCL) violation. Therefore, in a set of routine samples, if one or more are total coliform-positive and *E. coli*-negative, the air carrier can select any of the following corrective actions and follow through with that action until a set of total coliform samples is total coliform-negative:

(1) Within 72 hours of receipt of the routine positive result from the laboratory, the air carrier must disinfect and flush, and collect follow-up samples prior to providing water for human consumption from the aircraft water system. From the time follow-up samples are taken and submitted for analysis to the time of receiving the results, air carriers may provide water for human consumption from the aircraft water system to passengers and crew. If any follow-up sample is total coliform-positive and *E. coli*-negative, the air carrier must perform all of the following:

a. Conduct the Restrict Public Access requirements within 72 hours, and;

b. Conduct a second disinfection and flushing, and;

c. Collect follow-up samples prior to providing water for human consumption from the aircraft water system. From the time follow-up samples are taken, as a result of the second disinfection and flushing, to the time of receiving the results, air carriers must continue all Restrict Public Access provisions. If the second set of follow-up results are total coliform-positive and *E. coli*-negative, then the air carrier must continue to disinfect and flush the aircraft water system until a set of total coliform samples is total coliform-negative; or

(2) Within 24 hours of receipt of the routine positive result from the laboratory, the air carrier must collect three repeat samples. From the time repeat samples are taken and submitted for analysis to the time of receiving the results, air carriers may provide water for human consumption from the aircraft water system to passengers and crew. If any repeat sample is total coliform-positive and *E. coli*-negative, the air carrier must perform one of the following:

a. Conduct disinfection and flushing within 72 hours, and collect follow-up samples prior to providing water for human consumption from the aircraft water system. From the time follow-up samples are taken and submitted for analysis to the time of receiving the results, air carriers may provide water for human consumption from the aircraft water system to passengers and crew. If any follow-up sample is total coliform-positive and *E. coli*-negative, the air carrier must conduct the Restrict Public Access requirements within 72 hours, and perform a second disinfection and flushing and collect follow-up samples. From the time follow-up samples are taken, as a result of the second disinfection and flushing, to the time of receiving the results, air carriers must continue all restrict public access provisions. If the second set of follow-up results are total coliform-positive and *E. coli*-negative, then the air carrier must continue to disinfect and flush the aircraft water system until a set of total coliform samples is total coliform-negative. Or,

b. Conduct the Restrict Public Access requirements within 72 hours, and perform disinfection and flushing and collect follow-up samples prior to providing water for human consumption from the aircraft water system. From the time follow-up samples are taken and submitted for analysis to the time of receiving the results, air carriers may provide water for human consumption from the aircraft water system to passengers and crew. If any follow-up sample is total coliform-positive and *E. coli*-negative, the air carrier must conduct the Restrict Public Access requirements within 72 hours, and perform a second disinfection and flushing and collect follow-up samples. From the time follow-up samples are taken, as a result of the second disinfection and flushing, to the time of receiving the results, air carriers must continue all Restrict Public Access provisions. If the second set of follow-up results are total coliform-positive and *E. coli*-negative, then the air carrier must continue to disinfect and flush the aircraft water system until a set of total coliform samples is total coliform-negative. Or,

(3) Within 72 hours of receipt of the routine positive result from the laboratory, the air carrier must perform the Restrict Public Access requirements until operationally feasible to disinfect and flush, and collect follow-up samples. Once disinfection and flushing is performed, and a set of follow-up samples are taken and submitted for analysis, then the air carrier may cease the Restrict Public Access provisions and provide water for human consumption from the aircraft water system to passengers and crew. If the follow-up sample result from this first disinfection and flushing is total coliform-positive and *E. coli*-negative, the air carrier must perform all of the following:

a. Conduct the Restrict Public Access requirements within 72 hours, and

b. Conduct a second disinfection and flushing and collect follow-up samples. From the time follow-up samples are taken, as a result of the second disinfection and flushing, to the time of receiving the results, air carriers must continue all Restrict Public Access provisions. If the second set of follow-up results are total coliform-positive and *E. coli*-negative, then the air carrier must continue to disinfect and flush the aircraft water system until a set of total coliform samples is total coliform-negative.

As compared to the proposed ADWR, the changes made to the aforementioned

corrective actions for routine total coliform-positive samples that are *E. coli*-negative, include a third action to restrict public access, and the timeframe for the initial response has been changed from 24 hours to 72 hours to better align with the other two options for non-fecal routine occurrences. In addition, under any of the three corrective action options for non-fecal occurrences, upon completion of the first disinfection and flushing event, and follow-up samples are taken and submitted for analysis, the air carrier may provide water for human consumption to passengers and crew from the aircraft water system until laboratory results are received. Water is permitted to be served for human consumption after the first disinfection and flushing and follow-up samples are taken, because when the air carrier performs disinfection and flushing routinely and consistently with the manufacturer recommendations (this includes maintaining the full contact time of the disinfectant with the distribution system and affording the complete recommended flushing time) the quality of the water system should be returned to a total coliform-negative result. However, after the second or subsequent disinfection and flushing events occur due to follow-up samples that are total coliform-positive and *E. coli*-negative, water is not permitted to be served for human consumption because the results confirm an on-going microbiological occurrence problem that warrants further action and investigation until a set of follow-up samples is total coliform-negative. In the case where the water system cannot be physically disconnected or shut-off, or the flow of water prevented through the taps, air carriers are required to provide public notification to passengers and crew, so that the public is informed of an on-going non-fecal occurrence with the water system. EPA believes these changes are appropriate and public health protection is maintained while providing air carriers with the flexibility needed to perform corrective actions that meet their operational challenges.

In the proposed ADWR, corrective actions for failing to perform a requirement varied and were the following:

- Failure to perform routine disinfection and flushing would result in air carriers providing public notification to crew and passengers within 24 hours after discovery of the failure, until disinfection and flushing occurred;
- Failure to collect routine samples would result in air carriers providing public notification to crew and passengers within 24 hours after discovery of the failure, and within 72 hours disinfect and flush, and collect follow-up samples;
- Failure to collect repeat or follow-up samples would result in air carriers restricting public access within 24 hours after discovery of the failure and included: If the aircraft water system cannot be shut-off, public notification was given to crew and passengers, but if the aircraft water system could be shut-off, public notification was given to crew only; and within 72 hours disinfect and flush, and collect follow-up samples;
- Boarding water from a watering point that is not approved by FDA would result in air carriers providing public notification to crew and passengers within 24 hours after boarding the water, and within 72 hours disinfect and flush, and collect follow-up samples;
- Boarding water that did not meet national primary drinking water regulations (NPDWRs), would result in air carriers performing all the corrective actions as applicable to an *E. coli*/fecal coliform-positive result; and
- Boarding water under any condition where the water system was not in compliance with the procedures specified in the aircraft operation and maintenance plan would result in the air carrier providing public notification to passengers and crew within 24 hours of discovery of the failure, and within 72 hours disinfect and flush, and collect follow-up samples.

In general, commenters to the proposed ADWR stated that these corrective actions for performance failures were confusing and ''not commensurate with the potential health risk,'' they were administratively and economically burdensome, and that EPA should instead require the use of ''intermediate and/or diagnostic measures that allow carriers to determine whether an actual health risk was presented by the failure to meet the requirement.'' Based on the issues raised by the commenters, EPA determined that some changes are needed. The final rule provides more clarity and flexibility to aid in reducing economic and administrative burden while ensuring public health protection by aligning the corrective actions based on (1) a fecal occurrence (*i.e., E. coli*-positive event) and failing to perform the applicable required corrective actions (*e.g.,* fails to collect and submit for analysis the follow-up samples or boards water that that does not meet the NPDWRs applicable to transient non-community water systems when there is an *E. coli*-positive event); and (2) a non-fecal occurrence (*e.g.,* total coliform-positive and *E. coli*-negative event, or boards water that does not meet NPDWRs applicable to transient non-community water systems) and failing to perform the applicable required routine and/or corrective actions. Consequently, when the air carrier becomes aware that it has failed to perform required routine disinfection and flushing, or collect required routine samples, or collect the required repeat or follow-up samples for a total coliform-positive and *E. coli*-negative result; or boards water from a watering point not in accordance with FDA regulations; or boards water that does not meet NPDWRs applicable to transient non-community water systems; or that is otherwise determined to be unsafe due to non-compliance with the procedures specified in the operations and maintenance plan, the air carrier must perform the corrective actions associated with a total coliform-positive/*E. coli*-negative result for the Restrict Public Access provisions:

- Within 72 hours of receipt of discovery of the failure or after being notified by EPA of the failure, the air carrier must perform the Restrict Public Access requirements until operationally feasible to disinfect and flush, and collect follow-up samples. Once disinfection and flushing is performed, and a set of follow-up samples are taken and submitted for analysis, then the air carrier may cease the Restrict Public Access provisions and provide water for human consumption from the aircraft water system to passengers and crew. If the follow-up sample result from this first disinfection and flushing is total coliform-positive and *E. coli*-negative, the air carrier must perform all of the following:
  - Conduct the Restrict Public Access requirements within 72 hours, and
  - Conduct a second disinfection and flushing and collect follow-up samples. From the time follow-up samples are taken, as a result of the second disinfection and flushing, to the time of receiving the results, air carriers must continue all Restrict Public Access provisions. If the second set of follow-up results are total coliform-positive and *E. coli*-negative, then the air carrier must continue to disinfect and flush the aircraft water system until a set of total coliform samples is total coliform-negative.
  - If any follow-up sample is *E. coli*-positive, the air carrier must follow all the corrective actions for an *E. coli*-positive result. These actions must continue until a set of follow-up samples is total coliform-negative.

When the air carrier becomes aware that it has failed to collect the required follow-up samples due to an *E. coli*-positive result, or boards water that does not meet NPDWR applicable to transient non-community water systems for an *E. coli*-positive result, then the air carrier must follow all of the *E. coli*-positive corrective actions within 24 hours of discovery of the failure or after being notified by EPA of the failure. These actions must continue until a set of follow-up samples is total coliform-negative.

EPA determined that these corrective actions are appropriate because the ADWR relies on best management practices (*e.g.,* disinfection and flushing, following operations and maintenance plan procedures, etc.) in lieu of the monthly total coliform sampling as performed by stationary systems under the Total Coliform Rule. These best management practices are part of the minimum requirements that ensure safe and reliable drinking water to aircraft passengers and crew. If an air carrier fails to perform these minimum requirements, then either a known problem has not been promptly addressed or the quality of the aircraft water used for human consumption is in question.

In the proposed rule, air carriers were allowed to use water for hand washing purposes when the water was boarded from a watering point not approved by FDA or when required routine monitoring or disinfection and flushing was not conducted. Due to re-aligned corrective actions (as discussed earlier in this section) that provide air carriers with more flexibility to reduce the economic and administrative burden of grounding the plane to disinfect and flush within a set timeframe, the allowance of hand washing under these conditions no longer apply in the final ADWR. In addition, corresponding changes were also made to the applicable public notification sections of the rule (*i.e.,* removed reference from the health effects language that allowed ''hand washing'' under these conditions).

D. Restricted Access to the Water System

EPA proposed that in any situation where there is an affirmative indicator of actual or potential fecal contamination occurrence (*e.g.,* a single *E. coli*-positive sample, water that has been boarded from a known contaminated source or not in accordance with FDA regulations, etc.), the carrier would be required to restrict access to the water system as expeditiously as possible, but in no case more than 24 hours after the event triggering the requirement (*e.g.,* receipt of an *E. coli*-positive sample result). Ideally, under these conditions, access to all taps used to provide water for human consumption (*e.g.,* galleys, lavatories, water fountains, built in coffee/tea makers, etc.) should be physically disconnected or shut-off to prevent exposure. In the proposed rule, restrict public access included: (1) Physically disconnect or shut-off the water system; (2) provide public notification to passengers and crew if the water system cannot be physically disconnected or shut-off, and if the water system can be shut-off, then public notification must be provided to crew only; and (3) provide alternatives to the restricted use of the aircraft water system, such as bottled water for drinking and coffee preparation and alcohol-based antiseptic gels and wipes in the galleys and lavatories, and other feasible measures that reduce or eliminate the need to use the aircraft water system.

Public comments on the proposed ADWR raised concerns over physically disconnecting the water system and the use of alcohol-based antiseptic gels and wipes. With respect to physically disconnecting the water system, commenters stated the provision was in conflict with FDA's requirement to provide food handlers with hand washing facilities, and the provision did not account for situations where the water system cannot be physically disconnected or shut-off but other means can be used to prevent the flow of water through taps. In response to these comments, the final rule clarifies the Agency's intent to prevent passenger and crew exposure to the water. Therefore, EPA has adjusted the final rule language by adding another option to the Restrict Public Access requirements. In the final rule, as part of the Restrict Public Access requirements, air carriers can use other means to prevent the flow of water through the taps in addition to physically disconnecting or shutting-off the water system. EPA believes this change is a necessary step towards public health protection in the event of an actual or potential fecal contamination occurrence. If the event is due to a fecal occurrence, public access restrictions must remain in-place until the water system is disinfected and flushed and a complete set of follow-up samples is total coliform-negative. If the event is due to a non-fecal occurrence, public access restrictions must remain in-place until the water system is disinfected and flushed and a set of follow-up samples is collected and submitted for analysis. After this initial disinfection and flushing is performed, if any subsequent ones are needed, public access restrictions must remain in-place until a complete set of follow-up samples is total coliform-negative. FDA requirements permit air carriers to temporarily suspend the use of the aircraft drinking water system during emergencies. The ADWR provisions that restrict public access to the aircraft water system would be considered an emergency situation and, therefore, do not conflict with FDA regulations to provide food handlers with hand washing facilities.

In addition, due to the corrective action changes made to better align corrective actions based on non-fecal and fecal occurrences, EPA adjusted the 24-hour timeframe to initiate the Restrict Public Access requirements to 72 hours for non-fecal events. Therefore, if an air carrier fails to perform a requirement in the case of a non-fecal occurrence (*e.g.,* fails to perform a routine disinfection and flushing), the air carrier has 72 hours to initiate the Restrict Public Access requirements from discovery of the failure, or EPA's notification of the failure, or receipt of the non-fecal positive result. However, in the event of any failure to perform a requirement in the case of a fecal-occurrence (*e.g.*, fails to collect the follow-up samples, or boarding water that that does not meet NPDWRs for *E. coli*), EPA did not change the timeframe and the air carrier has 24 hours to initiate Restrict Public Access requirements from discovery of the failure, or EPA's notification of the failure, or receipt of the fecal positive result.

In determining whether it is ''feasible'' to physically disconnect or shut off the water system, EPA recognizes that in some cases carriers may need to consider binding operational constraints. For example, if the water system cannot be shut off without also shutting off water to the toilets, a carrier may determine that shutting off the water is not feasible and use the alternative Restrict Public Access provisions instead. EPA intends to provide further guidance on this issue in its ADWR technical guidance.

Regarding the requirement to provide alcohol-based antiseptic hand gels or wipes, commenters stated that it was too limiting and did not allow for the use of other alternative products as specified in FDA's monograph governing ''Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Tentative Final Monograph (TFM) for Health-Care Antiseptic Drug

Products.'' In the final rule, EPA has changed the Restrict Public Access provision to include any antiseptic hand gels or wipes in accordance with FDA regulations under 21 CFR part 333—''Topical Antimicrobial Drug Products for Over-the-Counter Human Use.'' In this way, the provision evolves with technology and new products, and maintains consistency with FDA regulations regarding these products.

E. Response to Proposed Rule Requests for Comment

1. Microbiological Indicators

In the proposed ADWR, EPA requested specific comment on whether bacterial presence measured by heterotrophic plate count (HPC) should be allowed, required, or not considered as an indicator of water quality in addition to total coliform monitoring. One commenter responded that HPC should be allowed as an indicator of water quality in addition to total coliform monitoring. However, several commenters responded that HPC is not a reliable indicator in aircraft water systems, that the sample holding time between collection and analysis of six hours if the sample is unrefrigerated is impractical, and that it provides no additional benefit justifying the regulatory burden of conducting HPC sampling. EPA agrees with commenters that the use of HPC in the ADWR is impractical due to the restrictions on sample holding times and the limitations of the information the HPC test results would provide. Therefore, today's rule does not require HPC monitoring. Additionally, HPC testing is used as a surrogate for disinfectant residual testing for stationary systems and since disinfectant residual testing is not an ADWR requirement, HPC testing is unnecessary under the ADWR.

2. Potential for Bacterial Growth

EPA requested specific comment on whether the final rule should include provisions to address extended periods during which the aircraft water would remain stagnant, experience high water temperatures, or other situations that may contribute to concern regarding bacterial growth. Although most aircraft water tanks are either topped off or drained on an almost daily basis, occasional situations occur when the water may sit stagnant for an extended period of time or otherwise not be turned over, and thus could be at risk for biofilm development or other bacterial growth. EPA received several public comments both in favor of and opposed to regulatory requirements for dealing with extended stagnant periods, or other situations that may be of concern regarding bacterial growth. Commenters in favor of such provisions, in general, agreed with EPA's analysis of the potential for bacterial growth. The comments ranged from stating that the provisions should be data-driven to ''The Agency should confirm the effectiveness of disinfection and flushing in eliminating contaminants and biofilm by evaluating all aspects of closed circulation, airline water systems.'' Commenters opposed to the requirements raised two main concerns: (1) Aircraft do not have the current means to measure the temperature of the water in the storage tank and retro-fitting the aircraft to do this would be an immense project, economically and logistically, for air carriers and manufacturers; and (2) Air carriers already implement procedures that guard against the risk of bacterial growth such as draining, disinfecting, and flushing the water tanks if the aircraft has been out-of-service for extended lengths of time. Based on these collective comments, the final rule does not include provisions to address extended stagnant periods, high water temperatures, or other situations that may augment concern for bacterial growth. Instead, EPA plans on addressing these issues in its ADWR technical guidance.

3. Temperature of Water From Sample Taps

EPA requested specific comment on whether sampling should only be limited to cold water taps when they are available. EPA also requested comment on whether or not, in the event that a sample is taken from a hot water tap, the temperature should also be measured to provide some indication of whether the temperature achieved is high enough to alter the microbiological results. EPA received several comments both in favor of and opposed to sampling only from cold water taps and measuring the temperature of water collected from hot water taps. The comments ranged from (1) the ADWR should include collecting samples from both cold water as well as hot water taps, and taking the temperature of water from hot water taps does not provide an accurate measurement of microbiological safeness, to (2) sampling should be from taps that are most representative of the water consumed by passengers which, in many cases, comes from galleys that are only equipped with hot water taps. Also, a commenter indicated that it would be impractical to set ''minimum temperature'' requirements that apply to ''all hot water taps not only because of the variety of aircraft in service, but also the effect that altitude has on [water] temperatures. On the ground, where sampling will occur, a tap would register a different temperature than it would at an aircraft's cruising altitude, which is when that tap is most likely to be used to serve coffee/tea.''

EPA agrees that sample locations should be those most representative of water used for human consumption by passengers and crew. However, since there is a potential for the temperature in the hot water taps to kill existing microorganisms, and this might mask whether there is a microbiological problem in the aircraft system, samples should be taken from cold water taps when they are available, except e.g., in the case when only a hot water tap is available in the galley. In this case, the galley sample should be taken from the hot water tap. In addition, EPA plans to further discuss tap sampling in its ADWR technical guidance.

4. Statistical Sampling of an Air Carrier Fleet

EPA requested specific comment on the use of statistical sampling methodologies, specifically on what type of monitoring scheme would allow a statistical sample to be representative of an entire air carrier fleet. EPA was especially interested in receiving input on whether such methodologies, if allowed, should only be used in conjunction with onboard or other supplemental treatment, such as adding a chemical disinfectant or ultraviolet light. EPA also requested input regarding the support for such an option, given the cost and logistical implications a positive coliform result would have on the statistical sample by triggering follow-up action in the entire fleet. The majority of the public comments were in favor of statistical sampling, but they did not provide any examples of a statistical method or data to support their position. In opposition to statistical sampling, a commenter expressed concern over the use of statistical sampling because of the variability of the quality of the water that could be boarded from various sources, and because, ''when blended, all of the chemical and microbiological parameters would change and data generated would become inaccurate.'' One commenter in favor of statistical sampling stated that EPA should allow the use of statistical sampling because there was substantive evidence that aircraft in a fleet, or a subset of a fleet, behaved similarly with respect to avoiding positive tests for total coliforms. However, new data beyond the AOCs' data was not provided to support this statement, and the AOCs'

data are not sufficiently robust to support such an analysis. Another commenter suggested that statistical sampling could be used to minimize the sample collection volumes and frequency; however, no sampling scheme or data was provided. Yet another commenter suggested EPA incorporate into the rule the allowance of a procedure whereby an individual carrier could propose a statistical sampling method, present a proposed program for doing so along with technical analyses demonstrating its representativeness and efficacy, and request EPA to review and approve the plan.

Today's rule does not include provisions for statistical sampling because EPA did not receive data to change its opinion that sampling a fraction of aircraft water systems does not identify all of the aircraft that may be operating with a contaminated water system. Therefore, the potential still exists that the un-sampled aircraft may be operating with a contaminated water system, possibly for years, until it is randomly selected and tested. EPA considers that its approach is appropriate, because each aircraft water system is a unique system that may board water from a potentially large number and variety of sources and distribution systems, and the volume of water that is boarded may vary on a daily basis or more often. Under current practices, the sources of water for an individual aircraft are so varied, in addition to variability in the quality of operation and maintenance practices, it would be difficult for a statistical sample to provide an accurate representation of all water being served on an air carrier's fleet. In addition, the majority of the committee members of EPA's Science Advisory Board (SAB) were not in favor of statistical sampling of aircraft drinking water because the available data is too sparse to interpret results for the whole fleet. As a result, the final rule does not allow for statistical sampling.

5. Option for Repeat Sampling

EPA requested specific comment on whether to disallow the option for repeat sampling in response to a routine total coliform-positive sample if the aircraft has boarded water since the routine sample was taken. EPA noted that the repeat samples may not be providing an accurate picture of the water quality since it is not characterizing the same water as the routine sample. EPA received comments that were both in favor of and opposed to disallowing the option for repeat sampling in response to a routine total coliform-positive sample. Commenters in favor of repeat sampling noted that it was a reliable method of investigating the extent of bacterial problems in the water system, and another commenter stated that it allows an air carrier to pinpoint a source of contamination and should be permitted. In opposition to repeat sampling, a commenter noted that it should not be allowed because the process takes several days, which extends the time period for passengers and crew to be exposed to a potential health risk. In today's rule, EPA maintains the option to collect repeat samples as a corrective action to a total coliform-positive routine sample that is *E. coli*-negative. EPA believes repeat sampling is a valuable option because it can indicate whether the problem reflected by the routine sample result is no longer present, or whether the problem has persisted and requires further corrective action; therefore, EPA is allowing the option for repeat sampling in response to a routine total coliform-positive sample that is *E. coli*-negative in this ADWR.

6. Disinfectant Residual Monitoring

EPA requested specific comment on whether it is appropriate to require monitoring of routine disinfectant residuals and if so, the frequency for monitoring and the corrective action required if sufficient disinfectant residuals are not detected. EPA received approximately the same number of comments in favor of and opposed to adding a requirement for routine monitoring of a disinfectant residual. In favor of monitoring for disinfectant residuals, a commenter stated that flight attendants should be trained in the use of chlorine residual testing equipment, and that the rule should maintain the AOCs' disinfectant residual monitoring requirements, because having a detectable residual is effective against bacterial growth. Commenters who opposed routine monitoring of a disinfectant residual thought that (1) it was unnecessary and does not provide a meaningful representation of risks or system integrity; (2) since air carriers receive finished water from PWSs, the level of disinfectant residual in the water supply is outside of the control of the air carriers; meaning, there is no benefit to requiring the carriers to monitor for disinfectant residual since the air carriers cannot take action to increase it on a system-wide basis; and (3) since water turns over very quickly in aircraft water systems, monitoring of residual disinfectant provides no added benefit.

The final rule does not require monitoring of a disinfectant residual for several reasons. First, the Surface Water Treatment Rule requires public water systems using surface water as a source to maintain a detectable disinfectant residual in the distribution system to ensure that disinfection is maintained throughout the water system. If a stationary system has a non-detectable disinfectant residual it may increase the amount of disinfectant added at the treatment facility, routinely flush water from dead-end or low water use areas of the distribution system, or add additional disinfection to a specific area of the system by installing booster-disinfection equipment to increase the disinfectant residual. Adding disinfectant booster equipment is not practicable or feasible for aircraft water systems due to tank design challenges. In addition, any corrective action requiring manual addition of water with a disinfectant residual would result in major disruptions to flight schedules (*e.g.,* to drain and refill or flush and disinfect the aircraft water tank). Second, since aircraft may board water more than once per day from a variety of sources, some of which may be groundwater that is not disinfected, EPA is uncertain whether monthly (or less frequent) disinfectant residual monitoring would provide useful information for aircraft water systems. At the same time, EPA believes that more frequent flushing and disinfection of the entire aircraft water system as a treatment technique combined with other barriers incorporated into the ADWR (*e.g.,* operations and maintenance plans, etc.) will ensure that microbiologically safe tap water is provided on the aircraft even without the residual disinfectant requirements applicable to stationary public water systems. Finally, the rule specifies that aircraft water systems are to board only finished water (*i.e.,* drinking water intended for distribution and consumption without further treatment). Therefore, it is the responsibility of the PWS from which the aircraft receives water to provide finished water that meets all the NPDWRs. Under the NPDWRs, if that PWS uses groundwater as its ambient source, then the finished water is not required to have a detectable disinfectant residual. Trying to determine if boarded water is required to have a disinfectant residual, and then trying to correct it if monitoring yields a non-detectable disinfectant residual result, would be an economic and operational burden for the air carrier.

7. Timeframe for Disinfection and Flushing

EPA requested specific comment on the appropriateness of the 72-hour timeframe to disinfect and flush, upon receipt of two total-coliform-positive sample results or a single fecal coliform- or *E. coli*-positive result, since disinfection and flushing requires taking the aircraft out-of-service to a designated maintenance facility. The majority of the public comments received favored the 72-hour timeframe with some concerns. For example, one commenter expressed that the timeframe is a ''sensible'' and necessary response, but such unscheduled activities will be costly and burdensome to the air carriers and create an unfavorable reaction from passengers to the restricted access to the water and flight delays. On the same note, another commenter stated that the 72-hour timeframe is appropriate under normal conditions; however, in situations where weather or other airspace system delays renders compliance with the 72-hour timeframe impractical, the Agency should provide an extension to 96 hours. Another commenter noted ''while in the abstract'' the timeframe appears to be achievable, the Agency needs to provide ''reasonable accommodation for scheduling'' in cases where the air carrier may receive sample results while the aircraft is overseas and is unable to return to the U.S. and to the maintenance facility in 72 hours. EPA recognizes that its proposed timeframe of 72 hours has the potential to disrupt some passenger services, and may cause logistical challenges such as receiving results while on an international route. Therefore, the final rule includes an optional corrective action intended to provide air carriers with more disinfection and flushing flexibility when routine and/or repeat coliform samples are total-coliform-positive but *E. coli*-negative. The option in the final rule allows the air carrier to perform the Restrict Public Access requirements within 72 hours of learning of the total coliform-positive result(s) that is *E. coli*-negative and conduct disinfection and flushing when it is operationally feasible. If the air carrier performs the Restrict Public Access Requirements, it does not have to disinfect and flush the aircraft in 72 hours, even if the aircraft water system cannot be physically disconnected or shut off, or the flow of water prevented through the taps. This option allows an air carrier to avoid service disruptions. The air carrier must collect follow-up samples prior to providing water for human consumption from the aircraft water system.

The presence of total coliforms only (when no *E. coli* is detected) presents a non-fecal potential health risk and is an indication of poor water quality. Since the water is of poor quality, the passengers and crew have a right-to-know. Hence, public notification is an emphasized component of this option. However, EPA considers an *E. coli*-positive result to be an acute potential fecal health risk, and it is a necessary public health measure to ground the plane in 72 hours when the water system cannot be physically disconnected or shut-off, or the flow of water prevented through the taps. Therefore, no changes were made in the final rule to the corrective actions for *E. coli*-positive results.

8. Supplemental Treatment

EPA requested specific comment on whether to require supplemental disinfection of water boarded onto aircraft, and whether to require monitoring for disinfectant residuals either in addition to or in lieu of supplemental disinfection. In addition, EPA requested comment on the feasibility of using other types of supplemental disinfection, such as UV treatment onboard aircraft, including providing incentives such as reduced routine monitoring or routine disinfection and flushing if an air carrier provides supplemental treatment. EPA received public comments both for and against the required use of supplemental treatment. Concern was expressed that supplemental treatment would increase costs for installation, extra weight, maintenance, and revision of aircraft operation and maintenance programs to accommodate a system that was not a part of the aircraft manufacturer's final product. Comments in support of supplemental treatment indicated that it may be viewed as the ultimate barrier against the risk of illness due to contaminated drinking water, and that there could be economic savings associated with reduced monitoring, reduced routine disinfection and flushing of aircraft water systems, and reduced remedial activity due to fewer positive test results. In addition, the commenter expressed that supplemental treatment could possibly reduce or eliminate the need for bottled water.

In the final ADWR, supplemental treatment is not required to be used with finished water that has been boarded on the aircraft. EPA believes it has prescribed the minimum requirements necessary to provide safe drinking water to passengers and crew onboard aircraft, including the requirement to board finished water. However, supplemental treatment can provide an additional barrier of protection in the event of a failure in any of the basic protection barriers required under this rule (*e.g.,* boarding finished water in accordance with FDA requirements; transferring the water from the watering point to the aircraft in a manner that ensures it will not become contaminated during the transfer; appropriate training of personnel; implementation of a water system operation and maintenance plan; etc.).

EPA believes the basic requirements of the ADWR, when performed consistently and diligently by the air carriers and their agents, provide assurance that drinking water onboard aircraft is safe for passengers and crew. Based on the information that EPA has at the time of this rulemaking, there is not sufficient information or data to support a requirement of supplemental treatment for aircraft water systems or for reducing any of the minimum requirements based on the installation of supplemental treatment. However, EPA plans to revisit this issue as part of the Six-Year review of this rule under SDWA section 1412(b)(9) and as more data become available. EPA also plans to address supplemental treatment issues in its ADWR technical guidance.

9. Recording the Boarding of Water

EPA requested specific comment on whether the potential benefit of recording information of where, how much, and when water is boarded outweighs the information collection burden. The boarding of water is usually done on an as-needed and as-requested basis, and EPA is not aware of any current requirements for capturing this type of information. EPA received public comments both for and against recording the information (*e.g.,* where, how much, and when water is boarded). One commenter stated that this information may be helpful in determining the cause of contamination events. Another commenter noted that requiring carriers to record this information would increase delays and costs. EPA has not received sufficient information or data that show a benefit to recording information on the boarding of water that would justify the additional recordkeeping burden on the air carrier. A single aircraft may board water several times a day from multiple airports. During the boarding of water, water from more than one source is usually commingled in the aircraft water system since the tanks may not be completely drained between fillings. Maintaining a log of this information

may not necessarily help in identifying the source of contamination of an aircraft water system because there could be multiple causes for contamination of such systems. Requiring a log would generate multiple daily records for each aircraft without a known health benefit. Consequently, the final rule does not require recording information of where, how much, and when water is boarded.

10. Follow-Up Sampling To Confirm the Effectiveness of Routine Disinfection and Flushing

EPA requested specific comment on whether follow-up sampling should be required to confirm the effectiveness of routine disinfection and flushing, and if so, the frequency/number of samples by which this monitoring should occur. EPA received comment in favor of and against requiring follow-up sampling after routine disinfection and flushing. A comment in favor of a requirement specifically noted, ''follow-up sampling should be required to confirm the effectiveness of routine disinfection and flushing, at least until a body of evidence can be established that clearly indicates that routine disinfection and flushing is reliably effective in removing biofilm from the aircraft water system.'' Another commenter believed, ''Once the aircraft has been disinfected and flushed, it may be necessary to test the water (again) to be sure that the disinfection has been successful and any problem of bacterial contamination has been solved. Sampling immediately after the disinfection and flushing may not show any hidden contamination problems. Hence, it is very important to wait a minimum time requirement (7–10 days) after disinfecting in order to re-commence the regular water testing regime.'' A commenter against such follow-up sampling as a regulatory requirement noted the following concerns: (1) It would ''inconsistent with and undermine the [routine] disinfection and monitoring frequency schedules''; (2) ''Inasmuch as routine disinfection does not involve evidence of a system problem, but is simply a preventative measure, there is no risk-based benefit to post-disinfection routine sampling''; (3) it would ''impose significant logistical and cost burdens on the airlines and unduly delay the return of aircraft to service while sampling results were processed''; and (4) ''Imposing additional sampling costs would be arbitrary and unreasonable in situations that do not suggest any compromise of system integrity, but rather are routine measures.''

As discussed in the proposed rule, EPA established that, to ensure the results of routine samples are not inadvertently skewed by sampling too close to a disinfection event, routine coliform samples must not be collected within 72 hours after completing routine disinfection and flushing procedures. Collecting a coliform sample within 72 hours of routine disinfection and flushing is not representative of the general conditions of the aircraft water system. This required 72-hour time interval has not been changed in the final rule. However, EPA does agree that such follow-up samples do aid in determining the success of disinfection and flushing, and encourages additional or special coliform sampling. Today's rule does not require follow-up sampling to confirm the effectiveness of routine disinfection and flushing. EPA has not received sufficient information or data that show that such monitoring is necessary, and believes spacing routine samples evenly across monitoring periods is more representative of aircraft drinking water quality and normal aircraft water system operations.

F. Aircraft Water System Operations and Maintenance Plan (§ 141.804)

Both the proposed rule and today's final rule require each air carrier to develop and implement an aircraft water system operations and maintenance plan for each aircraft water system operated by the air carrier. The air carrier need not develop a separate plan for each aircraft, but the air carrier must ensure that each aircraft it owns and operates is covered by a plan. For example, if the air carrier operates several of the same type of aircraft with the same type of water system, the air carrier may choose to develop one operations and maintenance plan that applies to aircraft of this type in its fleet.

In the proposed rule, air carriers would be required to include the aircraft water system operations and maintenance plans in a Federal Aviation Administration (FAA)-approved or -accepted air carrier operations and maintenance program. The Agency received several public comments against including this requirement in the final rule. Commenters expressed concern that this cast FAA in an inappropriate regulatory role, and that inclusion of the aircraft water system operations and maintenance plans in a FAA-approved or -accepted air carrier operations and maintenance program could cause significant reworking of existing maintenance program documents and may cause a duplication of effort in terms of regulatory oversight.

EPA disagrees with these comments and continues to believe that including the aircraft water system operations and maintenance plans in a FAA-accepted air carrier operations and maintenance program is a critical element of the final rule. FAA views proper operation and maintenance of the water system as an operational safety issue and agrees with EPA that it is appropriate to have the water system operations and maintenance plans included in the FAA-accepted operations and maintenance program. FAA requires all maintenance and operational procedures to be formally documented for each aircraft, and a failure by an air carrier to perform the prescribed program requirements may result in forfeiture of air carrier operating certificates and/or fines. In addition, properly integrating aircraft water system operations and maintenance procedures with other FAA-accepted operations and maintenance procedures is the most reliable way to ensure effective implementation of the plan and maximize effective oversight by EPA and FAA. This will help to minimize duplication of effort by the two agencies.

Though this requirement remains in the final rule, the Agency made one minor change to the language in this paragraph. Since the publication of the proposed rule, the Agency has learned that FAA does not ''approve'' the air carrier operations and maintenance programs, and that describing these programs as ''FAA-accepted'' programs is more accurate. Thus, the final rule requires that air carriers include the aircraft water system operations and maintenance plan in an FAA-accepted operations and maintenance program.

In the proposed rule, EPA proposed to allow air carriers only six months to develop an aircraft water system operations and maintenance plan for each existing aircraft. However, the Agency received several comments requesting that the compliance date be extended in order to allow for more time for air carriers to restructure maintenance programs between the AOCs and the final rule. The comments and the Agency's response are explained in more detail in section IV.L of this notice. EPA agrees that more time may be needed for air carriers to develop aircraft water system operations and maintenance plans for existing aircraft. Therefore, today's final rule extends the compliance date for development of the aircraft water system operations and maintenance plan for existing aircraft from six months to 18 months after publication of the final rule.

The Agency also received comments that the proposed rule was unclear as to

whether and how air carriers could amend their operations and maintenance plans or their coliform sampling plans. EPA agrees that the final rule should more clearly state the requirements for making changes to these plans. Thus, in the final rule, EPA addresses this concern by clarifying that any subsequent changes to the aircraft water system operations and maintenance plan must also be included in the FAA-accepted air carrier operations and maintenance program. For example, changes to the aircraft water system operations and maintenance plan could include, but are not limited to, changes to the procedures for disinfecting and flushing, including changes to the routine disinfection and flushing frequency, changes to training requirements, changes to self-inspection procedures, or changes to procedures for boarding water. The reporting requirements and the requirements for the coliform sampling plan have also been revised to respond to these comments.

The following is a discussion of elements of the aircraft water system operations and maintenance plan for which EPA received comment and/or made changes to the final rule.

The proposed rule would require that the operations and maintenance plan ensure all water boarded within the United States is from an FDA-approved watering point as required under 21 CFR 1240.80. The Agency received several comments on this requirement. Some commenters believed that EPA intended this requirement to alter FDA regulations applicable to watering points. The commenters also pointed out a possible inconsistency with this requirement and existing FDA regulations for watering points.

The Agency continues to acknowledge the joint oversight role of EPA and FDA in ensuring safe drinking water on aircraft. Therefore, this requirement does not seek to change any of FDA's regulations regarding watering points. Rather, EPA continues to defer to FDA with respect to regulating watering points. FDA will continue to ensure that the water supply meets the standards prescribed in EPA's NPDWRs, and ensure the methods of delivery, facilities for delivery, and the sanitary conditions surrounding the delivery of water to the aircraft in order to prevent the introduction, transmission, or spread of communicable diseases. Therefore, EPA revised the final rule to clearly communicate the Agency's intent. The final rule requires that all watering points must be selected in accordance with FDA regulations (21 CFR part 1240, subpart E). Today's final rule also requires that the operations and maintenance plan include procedures for ensuring that the air carrier board water from a watering point in accordance with FDA regulations (21 CFR part 1240, subpart E). These changes remove any inconsistency between the final rule and existing FDA regulations. It also ensures that all FDA regulations regarding watering points, including those applicable to watering points permitted for temporary use, are referenced in the final rule.

The proposed rule stated that in no event must air carriers knowingly serve water that violates the NPDWRs. It also provided that if it was necessary to board water that violated the NPDWRs, the air carrier must perform the corrective action requirements applicable to *E. coli*-positive coliform sample results. Today's final rule clarifies that in no event must air carriers knowingly provide water for human consumption that violates the NPDWRs applicable to transient non-community water systems. The Agency understands that sometimes unsafe water must be boarded in order to operate other essential systems, but at no time are air carriers to provide such water to passengers and crew in the form of beverages (*e.g.,* coffee, tea, etc.); nor may passengers and crew be allowed access to the water system (*i.e.,* the water system must be shut-off or the flow of water prevented through the taps); nor may the water be used for food preparation or any other consumptive use.

The proposed rule would require that the operations and maintenance plan describe emergency procedures to be used in the event that water is boarded to operate essential systems, such as toilets, but is not boarded from an FDA-approved or otherwise safe watering point. In the final rule, EPA continues to require that the operations and maintenance plan include a description of emergency procedures to be used in the event that unsafe water is boarded to operate essential systems. In today's final rule, the operations and maintenance plan must include a description of emergency procedures used when the air carrier becomes aware that unsafe water is boarded. Unsafe water includes:

- Water boarded from a watering point not in accordance with FDA regulations;
- Water that does not meet NPDWRs applicable to transient non-community water systems; or
- Water that is otherwise determined to be unsafe due to non-compliance with the procedures for boarding water specified in the operations and maintenance plan.

G. Notification Requirements to Passengers and Crew (§ 141.805)

1. Situations Requiring Public Notification

In EPA's proposed rule, public notification would be required in the following situations: (1) Where access to the aircraft water system is required to be restricted (*e.g.,* fecal coliform/*E. coli*-positive sample result); (2) where there was a failure to collect required samples; (3) when the quality of the water cannot be assured, for example, when water has been boarded from a watering point not approved by FDA, or in a manner that does not otherwise comply with the air carrier's procedures for ensuring safe water outside the United States; or (4) in any other situation where the Administrator, air carrier, or crew determines that notification is necessary to protect public health.

The Agency received several comments that prompted EPA to make changes to the situations described in the proposed rule. Some of the changes were a result of comments directly related to the public notification requirements of this section, while other changes were a result of comments applicable to other sections of the rule which subsequently affected these public notification requirements.

First, in the final rule, the Agency restructured the corrective action requirements in § 141.803 in response to comments discussed previously. Under the final corrective action provisions, public notification not only applies to an *E. coli*-positive sample result, but also when an air carrier chooses to restrict public access in response to a sample result that is total coliform-positive and *E. coli*-negative, and failure to perform required ADWR provisions.

Second, the Agency received comments stating that the situations requiring notification listed in the proposed rule in § 141.810 (*i.e.,* Violations) conflict with the situations listed in proposed § 141.805 (*i.e.,* Notification of passengers and crew). The comments suggested that to avoid confusion and inconsistency, EPA should delete the public notification requirements in § 141.810 or make conforming changes to the two sections. EPA agrees that the reference to public notification requirements in § 141.805 is confusing and inconsistent with § 141.810. Therefore, EPA removed all references to public notification from § 141.810 and made conforming changes

to § 141.805 of the final rule. As a result, air carriers are now required to give public notification when there has been a failure to perform required routine disinfection and flushing; or failure to collect routine, repeat or follow-up samples; or a failure to perform a corrective action associated with a fecal occurrence event.

Third, the Agency received several comments on the watering point selection requirement and the requirement to board water from FDA-approved watering points in § 141.804. These comments and EPA's response are discussed elsewhere in today's notice. As a result, the Agency clarified both of these requirements in § 141.804 of the final rule, and made the following changes under which air carriers must provide public notification when the air carrier becomes aware that the quality of water cannot be assured:

- Where water has been boarded from a watering point not in accordance with FDA regulations;
- Where water that has been boarded does not meet NPDWRs applicable to transient non-community water systems; and
- Where water is otherwise determined to be unsafe due to non-compliance with the procedures specified in § 141.804(b)(6).

2. Method of Notification Delivery

Both the proposed rule and today's final rule require that air carriers provide notification in a form and manner reasonably calculated to reach all passengers and crew. Using a variety of delivery methods for these notifications will help ensure that all passengers, including those with visual or hearing impairments, or non-English speakers, will have access to relevant public health information.

3. Cessation of Public Notification

The proposed rule would require that all public notification continue until all follow-up samples are total coliform-negative. As a result of clarifications made to the corrective action requirements in § 141.803 of the final rule, EPA also clarifies that an air carrier must continue to provide public notification until the aircraft water system is returned to unrestricted public access.

For instance, when the initial corrective action disinfection and flushing is conducted in response to a routine total coliform-positive sample result that is *E. coli*-negative, or there is a failure to perform required actions as a result of non-fecal events, public notification may cease when the aircraft water system is disinfected and flushed and follow-up samples have been collected. At this time, the water system may be returned to unrestricted public access; however, when corrective action disinfection and flushing is conducted more than once (*i.e.,* disinfection and flushing is conducted in response to a follow-up sample that is total coliform-positive and *E. coli*-negative), public access restrictions, including public notification, must remain in-place until a later set of follow-up samples is total coliform-negative.

If initial corrective action disinfection and flushing is conducted as a result of an *E. coli*-positive sample result, or a failure to perform required actions as a result of fecal events, public access restrictions, including public notification, must remain in-place until a complete set of follow-up samples is total coliform-negative (not just until they are collected and sent for analysis, as in the case where the corrective action is triggered by a total coliform-positive but *E. coli*-negative sample).

In both cases, when public access is restricted due to an *E. coli*-positive sample or a total coliform-positive sample that is *E. coli*-negative, if the air carrier can shut off the water system or restrict the flow of water through the taps, then public notification need only be conducted for the crew and not to the passengers.

4. Type of Notice Required When Public Access Is Restricted

Commenters noted that the public notification requirements in the proposed rule were confusing, and it was difficult to determine which requirements were applicable in situations where public access was restricted. In the final rule, the Agency better aligns the public notification requirements based on three categories: sample results (*i.e.,* a total coliform-positive and *E. coli*-negative result or an *E. coli*-positive result), non-fecal occurrence failures and events (*e.g.*, failure to conduct repeat sampling), and fecal occurrence failures and events (*e.g.,* failure to collect follow-up samples after the aircraft water system tests positive for *E. coli,* or the air carrier becomes aware that *E. coli*-positive water was boarded from a watering point not in accordance with FDA regulations, etc.).

In today's rule, EPA makes clear for all three public notification categories that if the aircraft water system can be physically disconnected, shut-off, or the flow of water is prevented through the taps, air carriers are required to provide public notification to the crew only. However, if the aircraft water system cannot be physically disconnected, shut-off, or the flow of water cannot be prevented through the taps, air carriers are required to provide public notification to passengers and crew. This is allowable for all three public notification categories.

In addition, today's rule requires that when an air carrier becomes aware that unsafe water was boarded, the public notice must include when and where the unsafe water was boarded. For the purpose of this requirement, unsafe water includes water that was boarded from a watering point not in accordance with FDA regulations (21 CFR part 1240 subpart E), or water that does not meet NPDWRs applicable to TNCWSs, or water that is otherwise determined to be unsafe due to non-compliance with the procedures specified in § 141.804(b)(6).

5. Standard Health Effects Language

Due to the removal of fecal coliforms as a fecal indicator (as discussed in section IV.C *Responses to Sample Results*), all references to ''fecal coliforms'' have been removed from the health effects language. In addition, in order to better align the health effects language in § 141.805 to the restructured corrective action requirements in § 141.803, the Agency clarified that there is specific health effects language applicable when public notification is triggered by an *E. coli*-positive sample result, a sample result that is total coliform-positive and *E. coli*-negative, or a non-fecal occurrence failure or event. In addition, new health effects language was added when public notification is triggered by a fecal occurrence failure or event.

The specific health effects language was also revised to conform to revisions to § 141.804. In the final rule, the watering point statement reads, ''Water was boarded from a watering point not in accordance with FDA regulations,'' rather than, ''Water was boarded from a watering point not approved by FDA.''

H. Reporting Requirements (§ 141.806)

EPA proposed that air carriers report the following to the Administrator within six months of publication of the final rule in the **Federal Register**:

- That a coliform sampling plan was developed for each existing aircraft;
- The frequency for routine coliform sampling identified in the coliform sampling plan developed for each existing aircraft; and
- That an operations and maintenance plan was developed for each existing aircraft.

The Agency received several comments requesting that the compliance date be extended in order to allow for more time for air carriers to

restructure maintenance programs between the AOCs and the final rule. EPA agrees that more time may be needed for air carriers to comply with these reporting requirements. Therefore, today's rule requires that air carries comply with these requirements 18 months after publication of the final rule. The comments and the Agency's response are explained in more detail in section IV.L of this notice.

EPA proposed that air carriers report a complete inventory of aircraft that are public water systems within six months of publication of the final rule. However, the Agency received several comments requesting that this compliance date be extended. EPA agrees that more time may be needed for air carriers to report a complete inventory of aircraft that are public water systems. Therefore, today's final rule extends the compliance date for development and reporting of the inventory to 18 months after publication of the final rule. The comments and the Agency's response are explained in more detail in section IV.L of this notice.

The Agency received comments requesting clarification on the aircraft inventory requirement to report changes in an aircraft's status from active to inactive or vice versa. In the final rule, EPA clarifies that active or inactive status refers to the aircraft's status as an aircraft water system. Thus, an aircraft that meets the definition of an aircraft water system is considered ''active,'' while one that does not meet this definition is considered ''inactive.'' For example, an aircraft may be considered ''inactive'' in situations where an aircraft is out of passenger service for extended maintenance, or where an aircraft is in passenger service, but flying strictly international routes where SDWA does not apply. Therefore, in the final rule, the Agency clarifies that air carriers must report, no later than 10 days following the calendar month in which the change occurred, the status, or the change in status, of any aircraft as an aircraft water system as defined in § 141.801.

In addition, EPA corrects the final rule by adding § 141.806(b)(2)(iv). This paragraph requires air carriers to report changes in the ability to physically shut off or disconnect the water system. This requirement was referred to in the preamble of the proposed rule, but omitted from the rule text. Restoring this requirement to the rule eliminates the inconsistency.

The Agency received comments that the proposed rule was unclear as to whether and how air carriers could amend their operations and maintenance plans or their coliform sampling plans. In the final rule, EPA addresses this concern by amending the final rule in several places, including by adding paragraph § 141.806(b)(6). This paragraph requires that the new frequency be reported to the Administrator no later than 10 days following the calendar month in which the change occurred. It also requires that these changes be included in the aircraft water system operations and maintenance plan that is included in the air carrier operations and maintenance program accepted by FAA.

In the proposed rule, the Agency noted for each aircraft water system the air carriers must include the routine disinfection and flushing frequency in the operations and maintenance plan, and air carriers must keep records of disinfection and flushing events. However, the Agency did not specifically note under § 141.806 that disinfection and flushing events must be reported to the Administrator. Since the Agency's intent included reporting disinfection and flushing events to the Administrator, the following was added to § 141.806 *Reporting Requirements* for consistency and clarification:

- For each existing aircraft water system, the air carrier must report to the Administrator the frequency for routine disinfection and flushing by 18 months after the final rule is published.
- For each new aircraft water system, the air carrier must report the frequency for routine disinfection and flushing, within the first calendar quarter of initial operation of the aircraft.
- Routine disinfection and flushing events must be reported no later than 10 calendar days following the disinfection and flushing period in which the disinfection and flushing occurred (*e.g.*, quarterly, semi-annually).
- Changes to the disinfection and flushing frequencies must be reported no later than 10 days following the calendar month in which the change occurred.

In addition, the final rule further clarifies the Agency's intent to require reporting of all events that require non-routine sampling.

I. Recordkeeping Requirements (§ 141.807)

In both the proposed rule and today's final rule, EPA requires that air carriers retain certain information for the aircraft water systems that they own or operate. The following is a discussion of recordkeeping requirements for which EPA received comment and/or made changes to the final rule.

In the proposed rule, the Agency did not specify the types of records related to disinfection and flushing and self-inspections that must be kept in order to meet the recordkeeping requirements. One commenter suggested that air carriers be required to ''keep records confirming performance of required disinfection'' and ''keep records confirming performance of self-inspections.'' In general, the commenter stated that requiring air carriers to keep more detailed records does not conform with current FAA-supervised maintenance activities, and adds unnecessary burdens and confusion with respect to compliance with the requirements.

EPA disagrees with amending these paragraphs in the manner suggested in the comments because the Agency considers these requirements to be the minimum necessary to ensure accountability and facilitate regulatory oversight to ensure compliance with the rule. In addition, EPA believes that detailed records of self-inspections are necessary to inform the Agency about the condition of the water system components at the time of the inspection and any deficiencies identified during the inspection. A record simply confirming performance of a self-inspection would not be sufficient. While EPA disagrees with amending this paragraph in the manner suggested in the comments, the Agency believes that adding more specificity to these recordkeeping requirements will help to avoid confusion with respect to compliance. Therefore, in today's rule, the Agency clarified this section by adding that at a minimum, records of disinfection and flushing must include the following: Date and time of the disinfection and flushing, and the type of disinfection and flushing (*i.e.*, routine or corrective action). The recordkeeping requirements for self-inspections were also amended to align with existing recordkeeping requirements for sanitary surveys conducted by owners and operators of stationary public water systems. In the final rule, at a minimum, records of self-inspection must include the following: Completion date of the self-inspection, and copies of any written reports, summaries or communications related to the self-inspection.

In the proposed rule, air carriers were required to keep public notices to passengers and crew for at least three years after issuance. However, the Agency received comments requesting that EPA amend the proposed rule to require air carriers to merely ''keep a record of notices to passengers and crew'' because the requirement to keep physical notices would be operationally difficult for air carriers. EPA disagrees

with amending this paragraph in the manner suggested in the comments because the Agency believes a copy of the physical notice is necessary to allow the Agency to determine compliance with the public notification requirements of this rule. In addition, EPA does not believe that this requirement is burdensome or operationally difficult because the copies need not be in paper format. Air carriers may keep electronic copies of these notices in lieu of paper copies. Thus, in the final rule, EPA clarifies that the air carrier must keep copies of the public notices given to passengers and crew.

J. Audit and Self-Inspection Requirements (§ 141.808)

In place of the sanitary survey that is required every five years for other transient non-community public water systems using surface water, the proposed and final rules require that a self-inspection be conducted by the air carrier for each aircraft water system no less frequently than once every five calendar years. An inspection of the entire aircraft water system need not be completed in one day; the air carrier need only ensure that all water system components are inspected once every five calendar years.

K. Violations (§ 141.810)

The Agency received several comments on the proposed rule stating that the notification requirements in § 141.810 conflict with the notification requirements proposed in § 141.805, and that to avoid confusion and inconsistency, EPA should delete the public notification requirements in this section or make conforming changes to both sections. EPA agrees that the reference to public notification requirements in this section is confusing and inconsistent with § 141.805. Therefore, as noted previously, EPA removed all references to public notification from § 141.810 and made conforming changes to § 141.805.

In addition, due to the removal of fecal coliforms as a fecal indicator (as discussed in section IV.C *Responses to Sample Results*), all references to fecal coliforms have been removed from the violations to conform with the revision. Other than the changes mentioned here, the specific violations remain the same in the final rule.

L. Compliance Date

In the proposed rule, air carriers would be required to comply with the rule within six months from the date of publication for several reporting and planning requirements, and 12 months from the date of publication for the rest of the rule requirements. While SDWA section 1412(b)(10) generally requires a three-year delay before new or amended rules are effective, that provision also authorizes EPA to set an earlier compliance date if the Agency determines that the earlier date is practicable. At the time of the proposal the Agency believed these dates were practicable because EPA will implement the rule, making it unnecessary to allow time for States to obtain enforcement authority prior to implementation of the rule. In addition, most air carriers are currently under AOCs which have similar requirements to this rule. Thus, EPA believed complying with the ADWR should not require significant changes in terms of operations and maintenance procedures. However, the Agency received several comments requesting that the compliance dates be extended to be more consistent with the three-year compliance date for new or revised NPDWRs under SDWA (section 1412(b)(10)). Also, some commenters expressed concern that the six-month compliance date would be impracticable because air carriers need more time to restructure maintenance programs between the AOCs and the final ADWR. Commenters suggested compliance dates of 18 months from the date of publication for the reporting and planning requirements, and 24 months from the date of publication for the rest of the rule.

The Agency agrees that the original timeline for compliance in the proposed rule may be too short for some air carriers to meet, and more time may be needed for air carriers to comply with the requirements of the final rule. Therefore, today's rule requires air carriers to comply with the requirements of the rule within 18 months from the date of publication for the reporting and planning requirements and 24 months from the date of publication for the rest of the rule requirements (see Table IV–3). The 18-month compliance date applies to the following:

- Develop a coliform sampling plan for existing aircraft and report to EPA that the plans were developed;
- Report the coliform sampling frequency included in the coliform sampling plans;
- Develop an Aircraft Water System Operations and Maintenance Plan for existing aircraft and report to EPA that the plans were developed;
- Report a complete inventory of existing aircraft water systems.

TABLE IV–3—COMPLIANCE AND REPORTING DATES

Requirement	Within the first 18 months following publication of the final rule	Within the first calendar quarter of initial operation	Within 10 days following the calendar month in which the change occurred	Beginning 24 months after publication of the final rule
Aircraft Water System Operations and Maintenance Plan:				
Existing [1] Aircraft—develop the plan and report that it has been developed	X			
New [2] Aircraft—develop the plan and report that it has been developed		X		
Aircraft Coliform Sampling Plan:				
Existing [1] Aircraft—develop the plan and report that it has been developed	X			
New [2] Aircraft—develop the plan and report that it has been developed		X		
Aircraft Frequency of Coliform Sampling and Routine Disinfection and Flushing:				
Existing [1] Aircraft—report the routine frequency	X			
New [2] Aircraft—report the routine frequency		X		
Report any change [3] in routine frequency			X	
Aircraft Inventory:				
Existing Aircraft—report the inventory	X			

TABLE IV–3—COMPLIANCE AND REPORTING DATES—Continued

Requirement	Within the first 18 months following publication of the final rule	Within the first calendar quarter of initial operation	Within 10 days following the calendar month in which the change occurred	Beginning 24 months after publication of the final rule
Report any change [3] to aircraft inventory			X	
Aircraft Routine Requirements:				
Conduct routine monitoring				X
Conduct routine disinfection and flushing				X

[1] *Existing Aircraft:* means any aircraft that is in operation when the final rule is published or is brought into operation within the first 18 months after the final rule is published.
[2] *New Aircraft:* means any aircraft that is brought into operation after the 18th month following publication of the final rule.
[3] Any changes made after the 18th month following publication of the final rule.

V. Cost Analysis

In estimating the costs of this rule, EPA considered impacts on aircraft water systems and air carriers, air carrier passengers, as well as Agency costs for rule implementation. Agency costs are included in lieu of State costs because implementation of the ADWR is the responsibility of EPA as a regulation applicable only to aircraft water systems. EPA also considered certain aspects of the ADWR that are non-quantified costs and that contribute to uncertainties in the cost estimates.

A. National Cost Estimates

EPA estimates that the total annualized implementation cost to the air carriers of carrying out the activities required in this ADWR is $7.04 million at a 3 percent discount rate and $6.95 million at a 7 percent discount rate. Table V–1 presents the itemized and total annualized implementation costs to air carriers (airlines) and EPA for the ADWR at 3 and 7 percent discount rates. Unit costs were multiplied by the number of air carriers or aircraft performing each requirement of the final rule, and results were summed for all components.

TABLE V–1—TOTAL ANNUALIZED PRESENT VALUE IMPLEMENTATION COSTS FOR THE FINAL ADWR

[$Millions, 2008$]

	Air carriers	Agency	Total	Air carriers	Agency	Total
	3%			7%		
Implementation	$0.002	$0.01	$0.01	$0.004	$0.01	$0.02
Annual Administration		0.24	0.24		0.23	0.23
Sampling Plan	0.002	0.001	0.002	0.002	0.001	0.003
O&M Plan	0.01	0.0001	0.01	0.02	0.0001	0.02
Coliform Monitoring	4.89	0.04	4.93	4.82	0.04	4.86
Routine Disinfection and Flushing	2.08		2.08	2.05		2.05
Corrective Action Disinfection and Flushing	0.05		0.05	0.05		0.05
Compliance Audit	0.01	0.01	0.02	0.01	0.01	0.02
Total	7.04	0.30	7.34	6.95	0.30	7.25

As discussed more fully in the preamble for the proposed rule (73 FR 19337), EPA notes that the cost of the proposed ADWR was significantly less than the current regulatory requirements of the NPDWRs. The current NPDWR requirements, considered to be the baseline against which to compare the set of regulatory requirements of the ADWR, would continue to apply to the aircraft water system industry if the requirements of the ADWR were not promulgated. The reduction in cost (i.e., the incremental savings of the ADWR compared to the regulatory baseline) is the result of tailoring the current regulations for transient non-community public water systems to the specific operational characteristics of aircraft drinking water systems.

EPA estimates that the total annualized incremental savings of this ADWR is $22.15 million at a 3 percent discount rate and $21.83 million at a 7 percent discount rate, as presented in Table V–2. The incremental savings represent the difference in total annualized implementation costs between the baseline (*i.e.*, the existing NPDWRs) and the final rule provisions.

TABLE V–2—TOTAL ANNUALIZED INCREMENTAL COST: EXISTING NPDWRS AND THE ADWR

[$Millions, 2008$]

	Alt 1 (Existing NPDWRs)	Alt 4 (Final Rule)	Incremental Cost (Alt 4 – Alt 1)	Alt 1 (Existing NPDWRs)	Alt 4 (Final Rule)	Incremental Cost (Alt 4 – Alt 1)
	3%			7%		

TABLE V–2—TOTAL ANNUALIZED INCREMENTAL COST: EXISTING NPDWRS AND THE ADWR—Continued

[$Millions, 2008$]

Implementation	0.01	0.01	0	0.02	0.02	0
Annual Administration	0.24	0.24	0	0.23	0.23	0
Monitoring Plan	0.002	0.002	0	0.004	0.003	(0.001)
O&M Plan	.....	0.01	0.01	.....	0.02	0.02
Coliform Monitoring	25.37	4.93	(20.44)	25.02	4.86	(20.16)
Disinfectant Residual Monitoring	3.17	.....	(3.17)	3.13	.....	(3.13)
Routine Disinfection and Flushing	.....	2.08	2.08	.....	2.05	2.05
Corrective Action Disinfection and Flushing	.....	0.05	0.05	.....	0.05	0.05
Sanitary Survey/Compliance Audit	0.7	0.02	(0.68)	0.69	0.02	(0.67)
Turbidity Monitoring	.....	.....	.....	.....	.....	.....
Total	29.49	7.34	(22.15)	29.08	7.25	(21.83)

The regulatory baseline does not reflect the Administrative Orders on Consent (AOCs), which are interim enforcement actions applying to 45 air carriers. As discussed earlier in this notice, in 2004, EPA found all aircraft that were public water systems to be out of compliance with the NPDWRs. EPA subsequently placed 45 air carriers under AOCs that will remain in effect until the tailored aircraft drinking water regulations are final. The air carrier AOCs combine sampling, best management practices, corrective action, public notification, and reporting and recordkeeping to ensure public health protection. With respect to sampling under the AOCs, air carriers with greater than 20 aircraft were required to sample 25 percent of their fleet quarterly, while air carriers with 20 or fewer aircraft were required to sample the entire fleet quarterly. Because the majority of the air carriers are currently subject to the requirements of the AOCs, EPA notes that if the requirements similar to the AOCs (*i.e.*, Alternative 2 in the EA) were used as an alternative baseline, the incremental cost of the final ADWR would be $0.18 million at the 3 percent discount rate and $0.18 million at the 7 percent discount rate.

As described in section V.C, the final rule provides additional cost savings to air carriers over the proposed rule.

B. Estimated Impacts of the Final ADWR to Air Carrier Passengers

EPA assumes that air carriers will pass on some or all of the costs of a new regulation to their passengers in the form of ticket price increases. For purposes of this analysis, EPA estimates that an average of 708.4 million passengers travel each year on aircraft that are affected by the ADWR. (*See* Column E, Exhibit 5.3 of the *Economic and Supporting Analysis Document for the Final ADWR,* (USEPA, 2009)). The cost passed on to passengers can be roughly estimated by dividing the air carriers' annualized implementation costs incurred by the number of passengers traveling each year. Based on this approximation, EPA estimates that passengers could face a relatively negligible increase of about one cent per ticket. The Agency has chosen to use the same number of passengers and flights estimated for the proposed rule for the final rule analysis in order to facilitate cost comparisons between the proposed and final rule provisions. This should not significantly affect the cost per passenger analysis.

C. Comparison of Costs From Proposed Rule to Final Rule

As discussed in section III.A of this notice, a collaborative rule development process was used for the proposed ADWR. This process provided an opportunity for stakeholders to inform the Agency about existing operations and maintenance practices for aircraft water systems and to convey concerns regarding existing regulations applicable to aircraft water systems, public health issues, fleet operations issues that are unique to the air carrier industry, and potential rule alternatives. Public comment was received on the proposed rule, and modifications have been incorporated into the final ADWR. Some of the modifications to the proposed rule that are incorporated into the final rule affected the estimated cost of implementing the regulation; other changes had no net effect on cost as modeled or are non-quantified costs. This section provides a discussion of the cost of the elements of the final ADWR that changed in comparison to the proposed rule and summarizes the assumptions that have been incorporated into the cost estimates.

The total annualized present value implementation costs at 3 percent and 7 percent discount rates for the rule provisions are shown in Table V–3 for the proposed and final rules. The total estimated annual quantified costs for implementing the ADWR have changed from the proposal costs of $8.13 million and $8.24 million (year 2008 dollars, using 3 and 7 percent discount rates, respectively) to $7.34 million and $7.25 million (year 2008 dollars, using 3 and 7 percent discount rates, respectively). The costs reported for the ADWR are from Table V–1; the costs for the proposed rule include adjustments for the general cost assumptions and methodology applied to the ADWR (*e.g.*, labor rates), with all costs adjusted to 2008 dollars.

TABLE V–3—COMPARISON OF PROPOSED AND FINAL ADWR TOTAL ANNUALIZED PRESENT VALUE IMPLEMENTATION COSTS

[$Millions, 2008$]

	3% Proposal	3% Final	7% Proposal	7% Final
Implementation	0.01	0.01	0.01	0.02
Annual Administration	0.25	0.24	0.25	0.23
Monitoring Plan	0.002	0.002	0.004	0.003
O&M Plan	0.01	0.01	0.02	0.02

TABLE V–3—COMPARISON OF PROPOSED AND FINAL ADWR TOTAL ANNUALIZED PRESENT VALUE IMPLEMENTATION COSTS—Continued

[$Millions, 2008$]

	3% Proposal	3% Final	7% Proposal	7% Final
Coliform Monitoring	5.50	4.93	5.57	4.86
Routine Disinfection and Flushing	2.21	2.08	2.23	2.05
Corrective Action Disinfection and Flushing	0.13	0.05	0.13	0.05
Compliance Audit	0.02	0.02	0.02	0.02
Total	*8.13	7.34	*8.24	7.25

*For the proposal, the total annualized present value cost at a 3% discount rate is less than at a 7% discount rate by a small amount. Changes in the implementation schedule (later implementation) for the final rule result in a larger calculated difference in present value costs, which results in total annualized present value costs slightly greater at a 3% discount rate than at a 7% rate.

The change in quantified costs between the proposed and final ADWR primarily is due to the additional flexibility in the ADWR provided to air carriers in choosing one of four options for flushing and disinfection frequency. Additional cost savings are due to changes in EPA's estimate of the cost to air carriers for implementation based on the percentage of aircraft that will select each option, the percentage of routine and repeat total coliform monitoring samples that are anticipated to be total coliform-positive, and the options available to air carriers for addressing total coliform-positive test results. These assumptions and regulatory impacts are discussed below and in more detail in the final ADWR Economic Analysis.

The final rule includes an extension of the compliance dates to 18 months after rule publication for the coliform sampling plan, operations and maintenance plan, and the aircraft inventory; the proposed rule specified a 6-month timeframe for these requirements. In addition, the final rule adjusts the timeframe for beginning to conduct sampling and other compliance requirements to 24 months after final rule publication from 12 months specified in the proposed rule. These delays in compliance dates have a slight effect on the timing of the costs represented by the 25-year compliance period captured by these estimates.

There is a one-time cost for reading and understanding the rule, becoming familiar with its provisions, and training employees on the rule. The final ADWR provides a burden allowance for each air carrier to read and understand the rule of eight hours per carrier, increased from two hours per carrier in the proposed rule. This change was made in response to public comments received on the proposed rule which conveyed that air carriers would typically have more than one individual responsible for this aspect of rule implementation. Commenters expressed concern that the proposed rule burden estimate of a single individual spending two hours to read and understand the rule did not adequately capture the true air carrier needs. In response to those concerns, the Agency assumes, on average, each air carrier will have four staff persons who will need to read and understand the rule at two hours estimated burden for each person. The eight hours per air carrier for staff training is unchanged from the proposed rule.

The coliform monitoring category includes cost estimates for routine sampling and repeat sampling; follow-up coliform monitoring is captured under corrective action disinfection and flushing cost estimates. Each aircraft routine coliform monitoring schedule is determined by the routine disinfection and flushing frequency that should be based on manufacturer's recommendations. EPA is providing air carriers with additional flexibility in the final rule by allowing air carriers to select any of the disinfection and flushing options in the absence of a manufacturer's recommendation. Although the specific routine monitoring frequency to be used by each aircraft is unknown, the Agency made assumptions on the frequencies they would follow and incorporated those assumptions into the cost model. Because selection of an option best suited to other operations and maintenance obligations of the aircraft is anticipated to help minimize flight disruption events but its effect is unknown, it is included in the uncertainties of the cost model.

The assumptions of the percentage of aircraft that would select each of the monitoring frequency options have been adjusted to incorporate the fourth option that is included in the final rule. As discussed previously, the addition of the fourth option for routine disinfection and flushing frequency was in response to public comment, which would also result in fewer flight disruptions necessary for aircraft water system maintenance needs. For the final rule, the Agency assumed 10 percent of the aircraft would follow monthly monitoring with routine disinfection and flushing one time per year or less; 30 percent would follow monitoring quarterly with routine disinfection and flushing twice per year; 30 percent would follow monitoring twice per year with routine disinfection and flushing 3 times per year; and 30 percent would follow annual monitoring with routine disinfection and flushing on a quarterly basis. The proposed rule assumed 10 percent of the aircraft would monitor monthly, 45 percent quarterly, and 45 percent annually.

Several other provisions in the final rule and their related assumptions affect the estimated cost for coliform monitoring. Those provisions include a reduction of the number of repeat samples to three in the final rule from four in the proposed rule, and allowing repeat sampling if more than one routine sample is total coliform-positive but *E. coli*-negative. The proposed rule limited the option for repeat sampling to situations when no more than one routine sample was total coliform-positive.

The final ADWR utilized the coliform monitoring findings of the air carrier AOCs processed as of December 31, 2008, for estimates of the percentage of routine and repeat samples that are anticipated to be total coliform-positive and *E. coli*-positive. A discussion of the AOCs data is found in section III.B of this notice. For the final rule, a routine sample total coliform-positive rate of 3.6 percent and a repeat sample total coliform-positive rate of 5.7 percent are assumed based on the AOCs results. The proposed rule applied a routine sample rate of 3.1 percent based on data available at the time, and a repeat sample rate of 50 percent.

Assumptions pertaining to the number of corrective action disinfection and flushing events that would be incurred were recalculated based on whether the aircraft was anticipated to already be scheduled for routine disinfection and flushing in the immediate future. In addition, if the water system is physically shut-off to prevent public access to the water system within 24 hours of notification of the need to restrict public access, the final rule removed the requirement that an aircraft with total coliform-positive or *E. coli*-positive water samples must be disinfected and flushed within a prescribed time period.

The Agency assumed, based on comments received on the proposed rule, that air carriers would seek to minimize the number of times unscheduled disinfection and flushing events that would occur and would take advantage of the ability to perform corrective action as part of the routine disinfection and flushing activities. Carriers can do this by scheduling routine sampling just prior to routine disinfection and flushing. Then, if a total coliform- or *E. coli*-positive sample is found, carriers can address the situation immediately through disinfection and flushing that would have occurred anyway, thereby merely adding the step of follow-up sampling to confirm that the flushing and disinfection has resolved the problem. Further, EPA believes that if public access to the water system is physically prevented because the water system is shut-off, more time is warranted to allow scheduling of the corrective action disinfection and flushing procedure to minimize flight disruptions.

Finally, the estimated reduction in the repeat sample total coliform-positive rate to 5.7 percent in the final rule from 50 percent in the proposed rule affected the anticipated costs for this category because fewer events were expected to be triggered by repeat sample results.

D. Non-Quantified Costs and Uncertainties

1. Non-Quantified Costs

Although EPA has estimated the majority of implementation costs of this ADWR, there are some costs that EPA was not able to quantify, such as:

- Air carrier costs due to unanticipated flight interruptions from aircraft water system corrective action maintenance needs. This includes the direct costs related to transporting an aircraft to a maintenance facility for the performance of disinfection and flushing corrective action events and any indirect costs of schedule disruptions or delays if an aircraft must be unexpectedly taken out of service.
- Passenger costs due to flight cancellations or delays related to unanticipated aircraft water system maintenance triggered solely by water quality issues.
- Air carrier costs to provide bottled water due to lack of onboard tap water during a restrict public access event.
- Air carrier customer service response to customer concerns following public notification that the water onboard an aircraft is not to be used for human consumption.

EPA has attempted to minimize costs by building flexibility into the ADWR, including various alternatives from which air carriers select compliance scenarios that best meet their flight schedules and other routine aircraft operations and maintenance needs. The final rule also includes provisions that minimize situations in which an aircraft is taken out of service solely due to drinking water system water quality issues, though this is sometimes necessary to protect consumers from water of unacceptable quality when the system cannot be physically shut-off or the flow of water through the tap(s) cannot be prevented.

Table V–4 presents the number of monitoring and disinfection and flushing events per year estimated for the proposed and final rules. EPA assumes routine coliform monitoring and routine disinfection and flushing of the water system would not disrupt service because the air carrier will incorporate these tasks into the aircraft operations and maintenance program. Only the unanticipated corrective action disinfection and flushing events shown in Column C of the table reflect the events that the Agency estimates could result in unscheduled disruptions to air carriers' schedules for the proposed or final rules.

TABLE V–4—ESTIMATED MONITORING AND DISINFECTION AND FLUSHING EVENTS FOR THE PROPOSED AND FINAL ADWR

	Routine coliform monitoring events/year A	Routine disinfection and flushing events/year B	Corrective action disinfection and flushing events/year C	Total number of disinfection and flushing events/year D=B+C
Proposed Rule	26,593	20,516	1,175	21,691
Final Rule	25,436	20,516	395	20,911

(C) The number of potential unanticipated corrective action disinfection and flushing events is shown for the proposed and final rules. All other disinfection and flushing events, whether based on a routine schedule or in response to monitoring results, would occur during scheduled water system operations and maintenance.

The significant decrease in the number of corrective action disinfection and flushing events in the final ADWR shown in Column C reflects the anticipated practice that air carriers will maximize the scheduling of routine coliform sampling with routine disinfection and flushing. This would likely result in a decrease in unscheduled flight disruptions because total coliform-positive samples may be immediately addressed through water system disinfection and flushing while the aircraft is already out of service. The final rule allows such disinfection and flushing to count toward both the corrective action and the routine procedures if follow-up total coliform samples required for corrective action are collected. Of the corrective action disinfection and flushing events noted in Column C, an unknown percentage will not disrupt service because the air carrier will either prevent public access to the water by shutting-off the system, thereby obtaining more flexibility with respect to scheduling and performing the corrective action disinfection and flushing, or will be able to perform the action within the maximum time frame specified by the rule without disrupting service.

2. Uncertainties in Cost Estimates

Many factors contribute to uncertainty in the national cost estimates including:

- Percent of aircraft that will be subject to each total coliform monitoring option.
- Expected results from total coliform monitoring.
- Estimated time for air carrier management to read, understand, and decide how to best comply with the ADWR; and to develop a training program, train staff, and oversee compliance.
- Percent of aircraft that will collect routine total coliform samples while aircraft are out of service for routine maintenance.
- Labor burden necessary for self-inspections above what is necessary for FAA-related inspections.
- Labor burden and costs associated with correcting significant deficiencies that are identified during self-inspections above what is necessary for FAA-related inspections.

For simplicity, EPA assumed for this analysis that all air carriers subject to the final rule will spend equal management time on ADWR requirements, regardless of fleet size or aircraft type. Assuming equal burden for all air carriers to comply with these rule management and oversight requirements could result in an over- or under-estimate of the costs presented. Regarding the expected results for coliform monitoring, EPA assumed that during routine coliform monitoring, each total coliform-positive sample would prompt an action by the air carrier. This assumption potentially over-estimates the number of aircraft that need to undergo disinfection and flushing as corrective action or repeat monitoring in cases where more than one routine sample is total coliform-positive in a given monitoring period. For example, an aircraft with positive samples from both routine sampling points is treated as two corrective actions or repeat sample collection events in the cost model when only one disinfection and flushing event would be necessary in such a case. Also, the number of sample results that prompt corrective action or repeat sampling may decrease over time as air carriers correct problems that lead to total coliform-positive samples.

In developing costs for air carriers to comply with the self-inspection requirements, EPA assumed that with the exception of reporting and record-keeping burden, no additional costs for self-inspections are incurred by air carriers. Labor burden for self-inspections, which involve a thorough review and inspection of an aircraft water system as well as addressing any deficiencies, is already captured under current FAA requirements and therefore is not included in the cost estimate for this rule. Additionally, EPA has assumed that deficiencies noted during self-inspections will be addressed during routine maintenance, and so has not accounted for costs associated with corrective actions stemming from deficiencies noted during self-inspections. This assumption potentially under-estimates air carrier burden for self-inspections.

VI. Benefits Analysis

For the proposed rule, EPA conducted and presented a qualitative analysis comparing the risks for each regulatory alternative considered during the regulatory process (73 FR 19338). EPA did not conduct a risk assessment, and the qualitative analyses were not intended to provide any insights into either the nature or the magnitude of possible public health risks that are associated with the consumption of drinking water on aircraft, or with the expected reductions in those public health risks anticipated from implementation of this rule.

As of the time of publication of the final rule, only limited baseline data and partial data collected under the AOCs are available for analysis. Additionally, EPA has found no data on outbreaks of illness caused by drinking water on aircraft. Therefore, EPA has determined that it is not feasible to perform a quantitative relative risk analysis at this time. EPA will continue to assess aircraft water system monitoring data during the Agency's Six-Year review of NPDWRs and evaluate whether additional quantitative analyses represent an opportunity for revisions to the ADWR. (Section 1412 (b)(9) of the Safe Drinking Water Act requires that EPA, no less than every six years, review and if appropriate, revise existing drinking water standards.)

This rule has been developed to protect against disease-causing microbiological contaminants or pathogens through the required development and implementation of aircraft water system operation and maintenance plans that include best management practices, air carrier training requirements, and periodic sampling of the onboard drinking water. Testing drinking water for each individual pathogen is not practical, nor feasible. Instead, water quality and public health professionals use total coliform bacteria as indicator organisms. Total coliforms are a group of closely related, generally harmless bacteria that live in soil and water, as well as in the digestive tracts of animals, and are therefore present in feces. The presence of total coliforms in drinking water suggests there has been a breach, failure, or other change in the integrity of the drinking water and that there may be fecal pathogens present in the water. Because some total coliform bacteria are naturally found in the environment, their presence in a drinking water distribution system may not indicate the presence of fecal contamination. In order to obtain more information on the likelihood of fecal contamination the total coliform-positive sample is analyzed for *E. coli,* a member of the total coliform group that is more likely to originate from warm-blooded animal fecal contamination.

Although EPA does not have data on outbreaks, that does not mean there is no illness because there is a high rate of underreporting of illnesses caused by drinking water contamination. Illness resulting from consuming contaminated aircraft water would be no exception to underreporting because the population onboard disperses after a flight and even if passengers develop gastrointestinal symptoms within hours of deplaning, they are unlikely to associate the illness with the aircraft water or to contact the air carrier or any government agency to report the illness. The effects of waterborne disease are usually acute, resulting from a single or small number of exposures. Waterborne pathogens are particularly harmful to sensitive populations, such as the immuno-compromised, and can sometimes prove fatal.

Routine disinfection and flushing required by this rule is expected to inactivate pathogens and control biofilm which can harbor pathogens in the aircraft water storage tank and distribution system that can contribute to endemic disease. Likewise, disinfection and flushing associated with corrective action is also expected to inactivate pathogens that may have entered the distribution system, resulting in decreased chance of illness. By reducing the potential for illness contracted through exposure to aircraft drinking water, EPA expects that the implementation of the ADWR will reduce the occurrence of illness passed through secondary spread (the spread of a pathogen within a field after the initial or primary infection). Furthermore, EPA expects the additional barriers to pathogens required under the ADWR, including disinfection and flushing combined with monitoring, water system training requirements for air carrier personnel, and restricting public access to drinking water when necessary, will reduce the likelihood of outbreaks associated with aircraft drinking water.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866, (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this 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 requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2279.02.

EPA requires comprehensive and current information on total coliform monitoring and associated corrective action activities to implement its program oversight and enforcement responsibilities mandated by the Safe Drinking Water Act (SDWA). EPA will use the information collected as a result of this final rule to support the responsibilities directed by SDWA and the implementation of the ADWR in the areas of monitoring and disinfecting and flushing, best management practices, and public notification, while decreasing the risk to public health. The rule requirements described in section IV of this notice are intended to improve the implementation from that of the Total Coliform Rule (TCR) by tailoring the ADWR to fit the unique challenges in the maintenance and operation practices of air carriers, and do not alter the original maximum contaminant level goals or the fundamental approach to controlling total coliform in drinking water.

Section 1401(1)(D) of SDWA requires that there must be ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, * * * .'' Furthermore, section 1445(a)(1) of SDWA requires that every person who is a supplier of water ''shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations * * * in determining whether such person has acted or is acting in compliance'' with this title.

Section 1412(b) of SDWA, as amended in 1996, requires the EPA to publish maximum contaminant level goals and promulgate NPDWRs for contaminants that may have an adverse effect on the health of persons, are known to or anticipated to occur in public water systems, and, in the opinion of the Administrator, present an opportunity for health risk reduction. The NPDWRs specify maximum contaminant levels or treatment techniques for drinking water contaminants (42 U.S.C. 300g–1). Section 1412(b)(9) requires that EPA, no less than every six years, review and if appropriate, revise existing drinking water standards. Currently, the Total Coliform Rule, which established the regulatory standards (i.e., maximum contaminant level goals and treatment techniques) by which this ADWR is based, is being revised in accordance with the finding of EPA's first Six-Year Review (68 FR 42907, July 18, 2003). Publication of this final rule complies with these statutory requirements.

Burden Estimate

The universe of respondents for the Information Collection Request (ICR) for this final rule comprises 63 air carriers that operate approximately 7,327 aircraft water systems, classified as Transient Non-Community Water Systems. The total burden associated with ADWR requirements over the 3 years covered by the ICR is 62,291 hours, an average of 20,764 hours per year. The total cost over the 3-year period is $7.54 million, an average of $2.5 million per year (simple average over 3 years). For air carriers, the total burden for the 3-year ICR period is 52,750 hours. The burden per response is .3 hours. During this period air carriers will undertake 179,773 responses. The respondent costs for the same period are $7.06 million. The labor cost is $1.90 million. The O&M cost (for sample analysis and shipping) is $5.16 million. The capital cost is $4,179. The air carrier average annual respondent burden is 17,583 hours, and the average cost per year is $2.35 million. The cost per response is $39. 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. When this ICR is approved by OMB, the EPA will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

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.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; 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.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the economic impacts of this final rule on small entities, EPA proposed defining ''small entity'' using the SBA standard as air carriers (NAICS codes 481111 and 481211) having fewer than 1,500 employees (13 CFR 121.201) rather than using the definition EPA has used for small stationary public water systems (''a public water system that serves 10,000 or fewer people''). *See* 73 FR 19320, April 9, 2008.

The Agency has consulted with the SBA Chief Counsel for Advocacy on using the SBA small business definition of fewer than 1,500 employees for purposes of assessing the economic impacts of this rule on small entities. As a result of this consultation, SBA agrees with the Agency's approach to the small

entity definition for air carriers for the proposed rule. However, SBA did request that EPA verify that they have captured the entire universe of small entities that may be impacted by the rule. SBA recommended that EPA contact two additional aviation and air transportation associations to determine whether there may be additional entities that may experience a significant economic impact as a result of this proposed rule, which were not accounted for in the Agency's earlier analysis. EPA contacted those associations and they confirmed the Agency's earlier findings from other sources, including the FAA, that EPA had taken into account all available information on the universe of small entities during the Agency's earlier analysis.

The Agency did not receive any comments on the use of this alternative definition of small entity in EPA's proposed rule of April 9, 2008 (73 FR 19320).

Today, EPA is establishing this alternative definition of ''small entity'' for purposes of its regulatory flexibility assessments under the RFA for this rule, any revisions to this rule, and any future drinking water regulations that address air carriers.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that the following businesses would be affected by the proposed Aircraft Drinking Water Rule: scheduled passenger air transportation (NAICS 481111) and nonscheduled chartered passenger air transportation (481211). EPA has estimated that 30 of the 63 air carriers subject to this final rule are small businesses. These 30 air carriers represent 48 percent of the universe of air carriers subject to the final rule, and all will be subject to the various provisions.

In evaluating whether this rule will have a significant impact on these small entities, EPA first determined the present value costs of the rule for these air carriers. EPA followed the same methodology as was used to develop the average annualized costs for the rule overall. EPA estimates a total annual implementation cost for all small air carriers of $524,380 at a 3 percent discount rate and $521,110 at a 7 percent discount rate. EPA also determined the average annual rule cost per small air carrier of $17,543 (annualized at 3 percent).

EPA estimates the average annual incremental rule cost for small entities (the difference between the final rule and the existing NPDWRs (presented as Alternative 1)) is a reduction of $258,599 at a 3 percent discount rate for compliance with the ADWR. Because the majority of the air carriers are currently subject to the requirements of the AOCs, EPA notes that if the AOCs were considered to be an alternative baseline, the incremental average annual rule cost between the final rule and requirements similar to those of the AOCs, (presented as Alternative 2) is a reduction of $32,188 (*i.e.*, cost savings).

Recognizing the variation of company sizes within this group, EPA has estimated the average annual incremental cost for small air carriers with fewer than 500 employees and for small air carriers with 500 or more employees. For the 17 air carriers with fewer than 500 employees, the annual incremental cost between the ADWR and Alternative 1 for each air carrier is a reduction of $78,042 at a 3 percent discount rate, and the annual incremental average rule cost between the ADWR and Alternative 2 is a reduction of $7,781 at a 3 percent discount rate. For the 13 small air carriers with 500 or more employees, the incremental cost between the ADWR and Alternative 1 for each air carrier is a reduction of $230,712 at a 3 percent discount rate, and the incremental average rule cost between the ADWR and Alternative 2 is a reduction of $20,104 at a 3 percent discount rate.

The final rule has been shown to offer a cost reduction over the existing regulations (*i.e.*, baseline), and so the annualized incremental costs are negative. Therefore, EPA has not compared the average annual incremental costs to small entities against the average annual revenue of the small entities as is normally done for this analysis.

Based on this analysis, EPA certifies that the final ADWR will not have a significant impact on a substantial number of small entities; therefore, the Agency did not develop an Initial Regulatory Flexibility Analysis for the rule.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. States, local, and Tribal governments will not incur annual costs associated with this final rule since oversight of air carriers (*i.e.*, interstate commerce carriers) is directly implemented by EPA and EPA will incur costs associated with this rulemaking. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

For these reasons, this rule is also not subject to the requirement of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

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 final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. States are not directly affected by any requirements in this rule, since oversight of air carriers (i.e., interstate commerce carriers) is implemented by EPA. Thus, Executive Order 13132 does not apply to this 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 solicited comment on the proposed rule from State and local officials, and the comments can be found in the docket for this rule and is addressed in the Response to Comment document (816–R0–9008) .

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). The provisions of this final rule apply to all aircraft transient non-community water systems. At present, EPA has not identified any Tribal governments that may be owners/air carriers of such systems. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action can have an effect on children. This final rule does not change the core Total Coliform Rule requirements in place to assure the protection of children from the effects of contaminants in drinking water. Rather this final rule, which is tailored to meet the specific challenges in the maintenance and operations of aircraft water systems, will improve the implementation of the current provisions under the Total Coliform Rule for aircraft water systems, and thereby, is expected to ensure and enhance more effective protection of public health, including the health of children who are aircraft passengers.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, none of the final rule requirements involve installation of treatment or other components that use a measurable amount of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule involves voluntary consensus standards in that it would require monitoring for total coliform and *E. coli,* and monitoring and sample analysis methodologies are often based on voluntary consensus standards. However, the final rule does not change any methodological requirements for monitoring or sample analysis as are indicated in the Total Coliform Rule; only, in some cases, the required frequency and number of samples. Also, EPA's approved monitoring and sampling protocols generally include voluntary consensus standards developed by agencies such as the American National Standards Institute (ANSI) and other such bodies wherever EPA deems these methodologies appropriate for compliance monitoring.

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

Executive Order (EO) 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 United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it 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 final rule, which is tailored to meet the specific challenges in the maintenance and operations of aircraft water systems, will improve the implementation of the current provisions under the Total Coliform Rule for aircraft water systems, and thereby, is expected to ensure and enhance more effective protection of public health, including any minority or low-income population who are aircraft passengers.

K. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with sections 1412(d) and 1412(e) of the Safe Drinking Water Act (SDWA), the Agency consulted with the National Drinking Water Advisory Council (NDWAC or the Council); the Secretary of Health and Human Services; and the Science Advisory Board (SAB), Drinking Water Committee.

EPA met with the SAB's Committee on July 24, 2008, and received comments from the Committee on October 1, 2008. The Committee's comments were valuable and taken into consideration in shaping the future direction of the final ADWR with regards to statistical sampling and hot water tap sampling. As previously mentioned, the majority of the Committee members of EPA's Science Advisory Board were not in favor of statistical sampling of aircraft drinking water quality at this time because the available data is too sparse to interpret results for the whole fleet. The Committee members did indicate that future data collected during implementation of ADWR may provide information on how to stratify samples. In addition, some members of the Committee indicated a preference to sampling cold water taps only; EPA agrees with some Committee members that there may be a potential for the temperature in the hot water taps to kill existing microorganisms, and this might mask whether there is a microbiological problem in the aircraft system. Thus, samples should be taken from cold water taps when they are available, except in the case when only hot water taps are available in the galley. In this case, the galley sample should be taken from the hot water tap because that water is being served to passengers and crew, EPA plans to further discuss tap sampling in its ADWR technical guidance.

The Agency consulted with NDWAC during the Council's May 25–27, 2007, meeting, and consulted with the Council on May 28, 2009. In general, in the May 2007 meeting, NDWAC recommended that EPA consider and request public comment on best management practices (BMPs) and public notification requirements, which may be feasible alternatives for the air carrier industry while providing greater public health protection. EPA has incorporated these recommendations into the ADWR by providing flexible BMP alternatives and timely notification requirements which have been tailored specifically to meet the unique operational characteristics of aircraft public systems and the air carrier industry. During the May 2009 NDWAC meeting, EPA presented the key issues raised by commenters on the proposal and areas of decision faced by the

Agency. No substantive comments were provided by NDWAC.

On August 8, 2007, EPA consulted with the Department of Health and Human Services (HHS) on the proposed rule. EPA also consulted with HHS on the final rule and received a favorable response to the Agency's novel approach and development of the ADWR and no issues were raised as a result of the consultation.

L. Plain Language

Executive Order 12866 encourages Federal agencies to write rules in plain language. Whenever possible, EPA wrote the action in active voice, with simplified language, and displayed information in tables to make it easier for the public to read and understand.

M. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 18, 2009.

N. Analysis of the Likely Effect of Compliance With the ADWR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of SDWA, as amended, requires that, in promulgating a NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, managerial, and financial (TMF) capacity of regulated entities. This analysis can be found in the Economic and Supporting Analyses document in EPA's public docket. Analyses reflect only the impact of new or revised requirements, as established by the ADWR; the impacts of previously established requirements are not considered.

VIII. References

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List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indian-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: October 5, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

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

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 2. Part 141 is amended by adding a new subpart X to read as follows:

Subpart X—Aircraft Drinking Water Rule

Sec.
141.800 Applicability and compliance date.
141.801 Definitions.
141.802 Coliform sampling plan.
141.803 Coliform sampling.
141.804 Aircraft water system operations and maintenance plan.
141.805 Notification to passengers and crew.
141.806 Reporting requirements.
141.807 Recordkeeping requirements.
141.808 Audits and inspections.
141.809 Supplemental treatment.
141.810 Violations.

Subpart X—Aircraft Drinking Water Rule

§ 141.800 Applicability and compliance date.

(a) *Applicability.* The requirements of this subpart constitute the National Primary Drinking Water Regulations for aircraft that are public water systems and that board only finished water for human consumption. Aircraft public water systems are considered transient non-community water systems (TNCWS). To the extent there is a conflict between the requirements in this subpart and the regulatory requirements established elsewhere in this part, this subpart governs.

(b) *Compliance Date.* Aircraft public water systems must comply, unless otherwise noted, with the requirements of this subpart beginning October 19, 2011. Until this compliance date, air carriers remain subject to existing national primary drinking water regulations.

§ 141.801 Definitions.

As used in this subpart, the term:

Administrator means the Administrator of the United States Environmental Protection Agency or his/her authorized representative.

Air Carrier means a person who undertakes directly by lease, or other arrangement, to engage in air transportation. The air carrier is responsible for ensuring all of the aircraft it owns or operates that are public water systems comply with all provisions of this subpart.

Aircraft means a device that is used or intended to be used for flight in the air.

Aircraft Water System means an aircraft that qualifies as a public water system under the Safe Drinking Water Act and the national primary drinking water regulations. The components of

an aircraft water system include the water service panel, the filler neck of the aircraft finished water storage tank, and all finished water storage tanks, piping, treatment equipment, and plumbing fixtures within the aircraft that supply water for human consumption to passengers or crew.

Aircraft Water System Operations and Maintenance Plan means the schedules and procedures for operating, monitoring, and maintaining an aircraft water system that is included in an aircraft operation and maintenance program accepted by the Federal Aviation Administration. (14 CFR part 43, 14 CFR part 91, 14 CFR part 121)

Finished Water means water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., supplemental disinfection, addition of corrosion control chemicals). (40 CFR 141.2)

Human Consumption means drinking, bathing, showering, hand washing, teeth brushing, food preparation, dishwashing, and maintaining oral hygiene.

Self Inspection means an onsite review of the aircraft water system, including the water service panel, the filler neck of the aircraft finished water storage tank; all finished water storage tanks, piping, treatment equipment, and plumbing fixtures; and a review of the aircraft operations, maintenance, monitoring, and recordkeeping for the purpose of evaluating the adequacy of such water system components and practices for providing safe drinking water to passengers and crew.

Watering point means the water supply, methods, and facilities used for the delivery of finished water to the aircraft. These facilities may include water trucks, carts, cabinets, and hoses.

§ 141.802 Coliform sampling plan.

(a) Each air carrier under this subpart must develop a coliform sampling plan covering each aircraft water system owned or operated by the air carrier that identifies the following:

(1) Coliform sample collection procedures that are consistent with the requirements of § 141.803(a) and (b).

(2) Sample tap location(s) representative of the aircraft water system as specified in § 141.803(b)(2) and (b)(4).

(3) Frequency and number of routine coliform samples to be collected as specified in § 141.803(b)(3).

(4) Frequency of routine disinfection and flushing as specified in the operations and maintenance plan under § 141.804.

(5) Procedures for communicating sample results promptly so that any required actions, including repeat and follow-up sampling, corrective action, and notification of passengers and crew, will be conducted in a timely manner.

(b) Each air carrier must develop a coliform sampling plan for each aircraft with a water system meeting the definition of a public water system by April 19, 2011.

(c) The coliform sampling plan must be included in the Aircraft Water System Operations and Maintenance Plan required in § 141.804. Any subsequent changes to the coliform sampling plan must also be included in the Aircraft Water System Operations and Maintenance Plan required in § 141.804.

§ 141.803 Coliform sampling.

(a) *Analytical Methodology.* Air carriers must follow the sampling and analysis requirements under this section.

(1) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 mL.

(2) Air carriers need determine only the presence or absence of total coliforms and/or *E. coli*; a determination of density of these organisms is not required.

(3) Air carriers must conduct analyses for total coliform and *E. coli* in accordance with the analytical methods approved in § 141.21(f)(3) and 141.21(f)(6).

(4) The time from sample collection to initiation of analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10°C during transit.

(5) The invalidation of a total coliform sample result can be made only by the Administrator in accordance with § 141.21(c)(1)(i), (ii), or (iii) or by the certified laboratory in accordance with § 141.21(c)(2).

(6) Certified laboratories. For the purpose of determining compliance with this subpart, samples may be considered only if they have been analyzed by a laboratory certified by a State or EPA. For the purposes of this paragraph, ''State'' refers to a State or Tribe that has received primacy for public water systems (other than aircraft water systems) under section 1413 of SDWA.

(b) *Routine Monitoring.* For each aircraft water system, the sampling frequency must be determined by the disinfection and flushing frequency recommended by the aircraft water system manufacturer, when available, and as identified in the operations and maintenance plan in § 141.804.

(1) Except as provided in paragraph (b)(2) of this section, the air carrier must collect two 100 mL total coliform routine samples at the frequency specified in the sampling plan in § 141.802 and in accordance with paragraph (b)(3) of this section;

(2) The air carrier may collect one 100 mL total coliform routine sample at the frequency specified in the sampling plan in § 141.802 for aircraft with a removable or portable tank that is drained every day of passenger service, and the aircraft has only one tap. Aircraft meeting the requirements of this paragraph do not have to comply with paragraph (b)(4) of this section.

(3) Air carriers must perform routine monitoring for total coliform at a frequency corresponding to the frequency of routine disinfection and flushing as specified in the Table b–1 (Routine Disinfection and Flushing and Routine Sample Frequencies). Air carriers must follow the disinfection and flushing frequency recommended by the aircraft water system manufacturer, when available. Where the aircraft water system manufacturer does not specify a recommended routine disinfection and flushing frequency, the air carrier must choose a frequency from Table b–1 (Routine Disinfection and Flushing and Routine Sample Frequencies):

TABLE B–1—ROUTINE DISINFECTION AND FLUSHING AND ROUTINE SAMPLE FREQUENCIES

Minimum routine disinfection & flushing per aircraft	Minimum frequency of routine samples per aircraft
At least 4 times per year = At least once within every three-month period (quarterly).	At least 1 time per year = At least once within every twelve-month period (annually).
At least 3 times per year = At least once within every four-month period.	At least 2 times per year = At least once within every six-month period (semi-annually).

TABLE B–1—ROUTINE DISINFECTION AND FLUSHING AND ROUTINE SAMPLE FREQUENCIES—Continued

Minimum routine disinfection & flushing per aircraft	Minimum frequency of routine samples per aircraft
At least 2 times per year = At least once within every six-month period (semi-annually).	At least 4 times per year = At least once within every three-month period (quarterly).
At least 1 time per year or less = At least once within every twelve-month period (annually) or less.	At least 12 times per year = At least once every month (monthly).

(4) One sample must be taken from a lavatory and one from a galley; each sample must be analyzed for total coliform. If only one water tap is located in the aircraft water system due to aircraft model type and construction, then a single tap may be used to collect two separate 100 mL samples.

(5) If any routine, repeat, or follow-up coliform sample is total coliform-positive, the air carrier must analyze that total coliform-positive culture medium to determine if *E. coli* is present.

(6) Routine total coliform samples must not be collected within 72 hours after completing routine disinfection and flushing procedures.

(c) *Routine Coliform Sample Results.*

(1) Negative Routine Coliform Sample Results. If all routine sample results are total coliform-negative, then the air carrier must maintain the routine monitoring frequency for total coliform as specified in the sampling plan in § 141.802.

(2) Positive Routine *E. coli* Sample Results. If any routine sample is *E. coli*-positive, the air carrier must perform all of the following:

(i) *Restrict Public Access.* Restrict public access to the aircraft water system in accordance with paragraph (d) of this section as expeditiously as possible, but in no case later than 24 hours after the laboratory notifies the air carrier of the *E. coli*-positive result or discovery of the applicable failure as specified in paragraphs (g) and (h) of this section. All public access restrictions, including applicable public notification requirements, must remain in-place until the aircraft water system has been disinfected and flushed and a complete set of follow-up samples is total coliform-negative; and

(ii) *Disinfect and Flush.* Conduct disinfection and flushing in accordance with § 141.804(b)(2). If the aircraft water system cannot be physically disconnected or shut-off, or the flow of water otherwise prevented through the tap(s), then the air carrier must disinfect and flush the system no later than 72 hours after the laboratory notifies the air carrier of the *E. coli*-positive result or discovery of the applicable failure as specified in paragraphs (g) and (h) of this section; and

(iii) *Follow-up Sampling.* Collect follow-up samples in accordance with paragraph (e) of this section. A complete set of follow-up sample results must be total coliform-negative before the air carrier provides water for human consumption from the aircraft water system and returns to the routine monitoring frequency as specified in the sampling plan required by § 141.802.

(3) Positive Routine Total Coliform Sample Results. If any routine sample is total coliform-positive and *E. coli*-negative, then the air carrier must perform at least one of the following three corrective actions and continue through with that action until a complete set of follow-up or repeat samples is total coliform-negative:

(i) *Disinfect and Flush.* In accordance with § 141.804(b)(2), conduct disinfection and flushing of the system no later than 72 hours after the laboratory notifies the air carrier of the total coliform-positive and *E. coli*-negative result. After disinfection and flushing is completed, the air carrier must collect follow-up samples in accordance with paragraph (e) of this section prior to providing water for human consumption from the aircraft water system. A complete set of follow-up sample results must be total coliform-negative before the air carrier returns to the routine monitoring frequency as specified in the sampling plan required by § 141.802; or

(ii) *Restrict Public Access.* In accordance with paragraph (d) of this section, restrict public access to the aircraft water system as expeditiously as possible, but in no case later than 72 hours after the laboratory notifies the air carrier of the total coliform-positive and *E. coli*-negative result or discovery of the applicable failure as specified in paragraphs (f), (g), and, (i) of this section. All public access restrictions, including applicable public notification requirements, must remain in-place until the aircraft water system has been disinfected and flushed, and a complete set of follow-up samples has been collected. The air carrier must conduct disinfection and flushing in accordance with § 141.804(b)(2). After disinfection and flushing is completed, the air carrier must collect follow-up samples in accordance with paragraph (e) of this section prior to providing water for human consumption from the aircraft water system. A complete set of follow-up sample results must be total coliform-negative before the air carrier returns to the routine monitoring frequency as specified in the sampling plan required by § 141.802; or

(iii) *Repeat Sampling.* Collect three 100 mL repeat samples no later than 24 hours after the laboratory notifies the air carrier of the routine total coliform-positive and *E. coli*-negative result. Repeat samples must be collected and analyzed from three taps within the aircraft as follows: The tap which resulted in the total coliform-positive sample, one other lavatory tap, and one other galley tap. If fewer than three taps exist, then a total of three 100 mL samples must be collected and analyzed from the available taps within the aircraft water system.

(A) If all repeat samples are total coliform-negative, then the air carrier must maintain the routine monitoring frequency for total coliform as specified in the sampling plan in § 141.802.

(B) If any repeat sample is *E. coli*-positive, the air carrier must perform all the corrective actions as specified in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section.

(C) If any repeat sample is total coliform-positive and *E. coli*-negative, then the air carrier must perform the corrective actions specified in paragraphs (c)(3)(i) or (c)(3)(ii) of this section, and continue through with that action until a complete set of follow-up samples is total coliform-negative.

(d) *Restriction of public access.* Restriction of public access to the aircraft water system includes, but need not be limited to, the following:

(1) Physically disconnecting or shutting off the aircraft water system, where feasible, or otherwise preventing the flow of water through the tap(s);

(2) Providing public notification to passengers and crew in accordance with § 141.805.

(3) Providing alternatives to water from the aircraft water system, such as bottled water for drinking and coffee or

tea preparation; antiseptic hand gels or wipes in accordance with 21 CFR part 333—''Topical Anti-microbial Drug Products for Over-the-Counter Human Use'' in the galleys and lavatories; and other feasible measures that reduce or eliminate the need to use the aircraft water system during the limited period before public use of the aircraft water system is unrestricted.

(e) *Post Disinfection and Flushing Follow-up Sampling.* Following corrective action disinfection and flushing, air carriers must comply with post disinfection and flushing follow-up sampling procedures that, at a minimum, consist of the following:

(1) For each aircraft water system, the air carrier must collect a complete set of total coliform follow-up samples consisting of two 100 mL total coliform samples at the same routine sample locations as identified in paragraphs (b)(2) and (b)(4) of this section.

(2) Follow-up samples must be collected prior to providing water to the public for human consumption from the aircraft water system.

(3) If a complete set of follow-up samples is total coliform-negative, the air carrier must return to the routine monitoring frequency for total coliform as specified in the sampling plan required by § 141.802.

(4) If any follow-up sample is *E. coli*-positive, the air carrier must perform all the corrective actions as specified in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section.

(5) If any follow-up sample is total coliform-positive and *E. coli*-negative the air carrier must restrict public access to the aircraft water system in accordance with paragraph (d) of this section as expeditiously as possible, but in no case later than 72 hours after the laboratory notifies the air carrier of the total coliform-positive and *E. coli*-negative result. All public access restrictions, including applicable public notification requirements, must remain in-place until the aircraft water system has been disinfected and flushed in accordance with § 141.804(b)(2) and a complete set of follow-up samples is total coliform-negative. The air carrier must collect follow-up samples in accordance with paragraph (e) of this section. A complete set of follow-up sample results must be total coliform-negative before the air carrier provides water for human consumption from the aircraft water system and returns to the routine monitoring frequency for coliform as specified in § 141.802.

(f) *Failure to Perform Required Routine Disinfection and Flushing or Failure to Collect Required Routine Samples.* If the air carrier fails to perform routine disinfection and flushing or fails to collect and analyze the required number of routine coliform samples, the air carrier must perform all the corrective actions as specified in paragraph (c)(3)(ii) of this section.

(g) *Failure to Collect Repeat or Follow-up Samples.* If the air carrier fails to collect and analyze the required follow-up samples as a result of an *E. coli*-positive result, then the air carrier must perform all the corrective actions as specified in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section. If the air carrier fails to collect and analyze the required repeat samples or follow-up samples as a result of a total coliform-positive and *E. coli*-negative result, then the air carrier must perform all the corrective actions as specified in paragraph (c)(3)(ii) of this section.

(h) *Failure to Board Water from a Safe Watering Point (E. coli-positive).* For the aircraft water system, the air carrier must perform all the corrective actions specified in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section when it becomes aware of an *E. coli*-positive event resulting from:

(1) Boarding water from a watering point not in accordance with FDA regulations (21 CFR part 1240 subpart E), or

(2) Boarding water that does not meet NPDWRs applicable to transient non-community water systems (§§ 141.62 and 141.63, as applied to TNCWS),

(3) Boarding water that is otherwise determined to be unsafe due to non-compliance with the procedures specified in § 141.804(b)(6).

(i) *Failure to Board Water from a Safe Watering Point (non-E. coli-positive).* For the aircraft water system, the air carrier must perform all the corrective actions specified in paragraphs (c)(3)(ii) of this section when it becomes aware of a non-*E. coli*-positive event resulting from:

(1) Boarding water from a watering point not in accordance with FDA regulations (21 CFR part 1240, subpart E),

(2) Boarding water that does not meet NPDWRs applicable to transient non-community water systems (§§ 141.62 and 141.63, as applied to TNCWS), or

(3) Boarding water that is otherwise determined to be unsafe due to non-compliance with the procedures specified in § 141.804(b)(6).

§ 141.804 Aircraft water system operations and maintenance plan.

(a) Each air carrier must develop and implement an aircraft water system operations and maintenance plan for each aircraft water system that it owns or operates. This plan must be included in a Federal Aviation Administration (FAA)-accepted air carrier operations and maintenance program (14 CFR part 43, 14 CFR part 91, 14 CFR part 121).

(b) Each aircraft water system operations and maintenance plan must include the following:

(1) Watering Point Selection Requirement. All watering points must be selected in accordance with Food and Drug Administration (FDA) regulations (21 CFR part 1240, subpart E).

(2) Procedures for Disinfection and Flushing. The plan must include the following requirements for procedures for disinfection and flushing of aircraft water system.

(i) The air carrier must conduct disinfection and flushing of the aircraft water system in accordance with, or is consistent with, the water system manufacturer's recommendations. The air carrier may conduct disinfection and flushing more frequently, but not less frequently, than the manufacturer recommends.

(ii) The operations and maintenance plan must identify the disinfection frequency, type of disinfecting agent, disinfectant concentration to be used, and the disinfectant contact time, and flushing volume or flushing time.

(iii) In cases where a recommended routine disinfection and flushing frequency is not specified by the aircraft water system manufacturer, the air carrier must choose a disinfection and flushing, and corresponding monitoring frequency specified in § 141.803(b)(3).

(3) Follow-up Sampling. The plan must include the procedures for follow-up sampling in accordance with § 141.803(e).

(4) Training Requirements. Training for all personnel involved with the aircraft water system operation and maintenance provisions of this regulation must include, but is not limited to the following:

(i) Boarding water procedures;

(ii) Sample collection procedures;

(iii) Disinfection and flushing procedures;

(iv) Public health and safety reasons for the requirements of this subpart.

(5) Procedures for Conducting Self-inspections of the Aircraft Water System. Procedures must include, but are not limited to, inspection of storage tank, distribution system, supplemental treatment, fixtures, valves, and backflow prevention devices.

(6) Procedures for Boarding Water. The plan must include the following requirements and procedures for boarding water:

(i) Within the United States, the air carrier must board water from watering

points in accordance with Food and Drug Administration (FDA) regulations (21 CFR part 1240, subpart E).

(ii) A description of how the water will be transferred from the watering point to the aircraft in a manner that ensures it will not become contaminated during the transfer.

(iii) A description of how the carrier will ensure that water boarded outside the United States is safe for human consumption.

(iv) A description of emergency procedures that meet the requirements in § 141.803(h) and (i) that must be used in the event that the air carrier becomes aware that water was boarded to operate essential systems, such as toilets, but was boarded from a watering point not in accordance with FDA regulations, does not meet NPDWRs applicable to transient non-community water systems (§§ 141.62 and 141.63, as applied to TNCWSs), or is otherwise unsafe.

(7) Coliform Sampling Plan. The air carrier must include the coliform sampling plan prepared in accordance with § 141.802.

(8) Aircraft Water System Disconnect/Shut-off, or Prevent Flow of Water Through the Tap(s) Statement. An explanation of whether the aircraft water system can be physically disconnected/shut-off, or the flow of water otherwise prevented through the tap(s) to the crew and passengers.

(c) For existing aircraft, the air carrier must develop the water system operations and maintenance plan required by this section by April 19, 2011;

(d) For new aircraft, the air carrier must develop the operations and maintenance plan required in this section within the first calendar quarter of initial operation of the aircraft.

(e) Any changes to the aircraft water system operations and maintenance plan must be included in the FAA-accepted air carrier operations and maintenance program.

§ 141.805 Notification to passengers and crew.

(a) Air carriers must give public notice for each aircraft in all of the following situations:

(1) Public access to the aircraft water system is restricted in response to a routine, repeat or follow-up total coliform-positive or *E. coli*-positive sample result in accordance with § 141.803(d);

(2) Failure to perform required routine disinfection and flushing or failure to collect required routine samples in accordance with § 141.803(f);

(3) Failure to collect the required follow-up samples in response to a sample result that is *E. coli*-positive in accordance with § 141.803(g);

(4) Failure to collect the required repeat samples or failure to collect the required follow-up samples in response to a sample result that is total coliform-positive and *E. coli*-negative in accordance with § 141.803(g);

(5) In accordance with § 141.803(h), the air carrier becomes aware of an *E. coli*-positive event resulting from water that has been boarded from a watering point not in accordance with FDA regulations (21 CFR part 1240, subpart E), or that does not meet NPDWRs applicable to transient non-community water systems, or that is otherwise determined to be unsafe due to non-compliance with the procedures specified in § 141.804(b)(6);

(6) In accordance with § 141.803(i), the air carrier becomes aware of a non-*E. coli*-positive event resulting from water that has been boarded from a watering point not in accordance with FDA regulations (21 CFR part 1240, subpart E), or that does not meet NPDWRs applicable to transient non-community water systems, or that is otherwise determined to be unsafe due to non-compliance with the procedures specified in § 141.804(b)(6).

(7) The Administrator, the carrier, or the crew otherwise determines that notification is necessary to protect public health.

(b) Public notification:

(1) Must be displayed in a conspicuous way when printed or posted;

(2) Must not contain overly technical language or very small print;

(3) Must not be formatted in a way that defeats the purpose of the notice;

(4) Must not contain language that nullifies the purpose of the notice;

(5) Must contain information in the appropriate language(s) regarding the importance of the notice, reflecting a good faith effort to reach the non-English speaking population served, including, where applicable, an easily recognized symbol for non-potable water.

(c) Public notification for paragraph (a)(1) of this section must meet the requirements of paragraph (b) of this section in addition to the following:

(1) Public notification must include a prominently displayed, clear statement in each lavatory indicating that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use; and

(2) A prominent notice in the galley directed at the crew which includes:

(i) A clear statement that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use;

(ii) A description of the violation or situation triggering the notice, including the contaminant(s) of concern;

(iii) When the violation or situation occurred;

(iv) Any potential adverse health effects from the violation or situation, as appropriate, under paragraph (g) of this section;

(v) The population at risk, including sensitive subpopulations particularly vulnerable if exposed to the contaminant in the drinking water;

(vi) What the air carrier is doing to correct the violation or situation; and

(vii) When the air carrier expects to return the system to unrestricted public access.

(3) If passenger access to the water system is physically prevented through disconnecting or shutting off the water, or the flow of water prevented through the tap(s), or if water is supplied only to lavatory toilets, and not to any lavatory or galley taps, then only the notice specified in paragraph (c)(2) of this section is required.

(4) Air carriers must initiate public notification when restriction of public access is initiated in accordance with § 141.803(d) and must continue until the aircraft water system is returned to unrestricted public access.

(d) Public notification for paragraphs (a)(2), (a)(4), and (a)(6) of this section must meet the requirements of paragraph (b) of this section in addition to the following:

(1) Public notification must include a prominently displayed, clear statement in each lavatory indicating that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use; and

(2) A prominent notice in the galley directed at the crew which includes:

(i) A clear statement that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use;

(ii) A clear statement that it is not known whether the water is contaminated because there was a failure to perform required routine disinfection and flushing; or a failure to perform required monitoring; or water was boarded from a watering point not in accordance with FDA regulations, or that does not meet NPDWRs applicable to transient noncommunity water systems, or that is otherwise determined

to be unsafe due to noncompliance with the procedures specified in § 141.804(b)(6);

(iii) When and where the unsafe water was boarded or when the specific monitoring or disinfection and flushing requirement was not met;

(iv) Any potential adverse health effects from exposure to waterborne pathogens that might be in the water, as appropriate, under paragraph (g) of this section;

(v) The population at risk, including sensitive subpopulations particularly vulnerable if exposed to the contaminant in the drinking water; and

(vi) A statement indicating when the system will be disinfected and flushed and returned to unrestricted public access.

(3) If passenger access to the water system is physically prevented through disconnecting or shutting off the water, or the flow of water prevented through the tap(s), or if water is supplied only to lavatory toilets, and not to any lavatory or galley taps, then only the notice specified in paragraph (d)(2) of this section is required.

(4) Air carriers must initiate public notification when restriction of public access is initiated in accordance with § 141.803(d) and must continue until the aircraft water system is returned to unrestricted public access.

(e) Public notification for paragraphs (a)(3) and (a)(5) of this section must meet the requirements of paragraph (b) of this section in addition to the following:

(1) Public notification must include a prominently displayed, clear statement in each lavatory indicating that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use; and

(2) A prominent notice in the galley directed at the crew which includes:

(i) A clear statement that the water is non-potable and should not be used for drinking, food or beverage preparation, hand washing, teeth brushing, or any other consumptive use;

(ii) A clear statement that the water is contaminated and there was a failure to conduct required monitoring; or a clear statement that water is contaminated because water was boarded from a watering point not in accordance with FDA regulations, or that does not meet NPDWRs applicable to transient noncommunity water systems, or that is otherwise determined to be unsafe due to noncompliance with the procedures specified in § 141.804(b)(6);

(iii) A description of the contaminant(s) of concern;

(iv) When and where the unsafe water was boarded or when the specific monitoring requirement was not met;

(v) Any potential adverse health effects from the situation, as appropriate, under paragraph (g) of this section;

(vi) The population at risk, including sensitive subpopulations particularly vulnerable if exposed to the contaminant in the drinking water;

(vii) A statement indicating what the air carrier is doing to correct the situation; and

(viii) When the air carrier expects to return the system to unrestricted public access.

(3) If passenger access to the water system is physically prevented through disconnecting or shutting off the water, or the flow of water prevented through the tap(s), or if water is supplied only to lavatory toilets, and not to any lavatory or galley taps, then only the notice specified in paragraph (e)(2) of this section is required.

(4) Air carriers must initiate public notification when restriction of public access is initiated in accordance with § 141.803(d) and must continue public notification until a complete set of required follow-up samples are total coliform-negative.

(f) Public notification for paragraph (a)(7) of this section must meet the requirements of paragraph (b) of this section in addition to the following:

(1) Notification must be in a form and manner reasonably calculated to reach all passengers and crew while on board the aircraft by using one or more of the following forms of delivery:

(i) Broadcast over public announcement system on aircraft;

(ii) Posting of the notice in conspicuous locations throughout the area served by the water system. These locations would normally be the galleys and in the lavatories of each aircraft requiring posting;

(iii) Hand delivery of the notice to passengers and crew;

(iv) Another delivery method approved in writing by the Administrator.

(2) Air carriers must initiate public notification within 24 hours of being informed by EPA to perform notification and must continue notification for the duration determined by EPA.

(g) In each public notice to the crew, air carriers must use the following standard health effects language that corresponds to the situations in paragraphs (a)(1) through (a)(6) of this section.

(1) Health effects language to be used when public notice is initiated due to the detection of total coliforms only (not *E. coli*) in accordance with paragraph (a)(1) of this section:

Coliform are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in [INSERT NUMBER OF SAMPLES DETECTED] samples collected and this is a warning of potential problems. If human pathogens are present, they can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(2) Health effects language to be used when public notice is initiated due to any *E. coli*-positive routine, repeat, or follow-up sample in accordance with paragraph (a)(1) of this section:

E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(3) Health effects language to be used when public notice is initiated due to a failure to conduct routine monitoring or routine disinfection and flushing in accordance with paragraph (a)(2) of this section; or when there is a failure to conduct repeat or follow-up sampling in accordance with paragraph (a)(4) of this section; or in accordance with paragraph (a)(6) of this section, when the air carrier becomes aware of a non-*E. coli*-positive event that is the result of water that was boarded from a watering point not in accordance with FDA regulations (21 CFR part 1240, subpart E), or that does not meet NPDWRs applicable to transient non-community water systems, or that is otherwise determined to be unsafe due to non-compliance with the procedures specified in § 141.804(b)(6):

Because [REQUIRED MONITORING AND ANALYSIS WAS NOT CONDUCTED], [REQUIRED DISINFECTION AND FLUSHING WAS NOT CONDUCTED] [WATER WAS BOARDED FROM A WATERING POINT NOT IN ACCORDANCE WITH FDA REGULATIONS (21 CR 1240 SUBPART E)], or [OTHER APPROPRIATE EXPLANATION], we cannot be sure of the quality of the drinking water at this time. However, drinking water contaminated with human pathogens can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(4) Health effects language to be used when public notice is initiated due to a

failure to conduct required follow-up monitoring in response to a sample result that is *E. coli*-positive in accordance with paragraph (a)(3) of this section; or in accordance with paragraph (a)(5) of this section, when the air carrier becomes aware of an *E. coli*-positive event that is the result of water that was boarded from a watering point not in accordance with FDA regulations (21 CFR part 1240, subpart E), or that does not meet NPDWRs applicable to transient non-community water systems, or that is otherwise determined to be unsafe due to non-compliance with the procedures specified in § 141.804(b)(6):

Because required follow-up monitoring and analysis was not conducted after the aircraft water system tested positive for *E. coli,* we cannot be sure of the quality of the drinking water at this time. *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

OR

Water was boarded that is contaminated with *E. coli* because [WATER WAS BOARDED FROM A WATERING POINT NOT IN ACCORDANCE WITH FDA REGULATIONS (21 CR 1240 SUBPART E)], or [OTHER APPROPRIATE EXPLANATION]. *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

§ 141.806 Reporting requirements.

(a) The air carrier must comply with the following requirements regarding reporting of the development of the coliform sampling plan, the operations and maintenance plan, and the disinfection and flushing and coliform sampling frequencies.

(1) The air carrier must report to the Administrator that it has developed the coliform sampling plan required by § 141.802, which covers each existing aircraft water system, as well as report the frequency for routine coliform sampling identified in the coliform sampling plan by April 19, 2011. The air carrier must report to the Administrator that it has developed its operations and maintenance plan required by § 141.804 and report the frequency for routine disinfection and flushing by April 19, 2011;

(2) For each new aircraft meeting the definition of an aircraft water system, which becomes operational after publication of this subpart, the air carrier must report to the Administrator that it has developed the coliform sampling plan required by § 141.802, as well as report the frequency for routine coliform sampling identified in the coliform sampling plan, within the first calendar quarter of initial operation of the aircraft. The air carrier must report to the Administrator that it has developed the aircraft water system operations and maintenance plan required by § 141.804, and report the frequency for routine disinfection and flushing within the first calendar quarter of initial operation of the aircraft.

(b) The air carrier must report the following information to the Administrator:

(1) A complete inventory of aircraft that are public water systems by April 19, 2011. Inventory information includes, at a minimum, the following:

(i) The unique aircraft identifier number;

(ii) The status (active or inactive) of any aircraft as an aircraft water system as defined in § 141.801;

(iii) The type and location of any supplemental treatment equipment installed on the water system; and

(iv) Whether the aircraft water system can be physically disconnected or shut-off, or the flow of water prevented through the tap(s).

(2) Changes in aircraft inventory no later than 10 days following the calendar month in which the change occurred. Changes in inventory information include, at a minimum, the following:

(i) Change in the unique identifier number for any new aircraft, or any aircraft removed from the carrier's fleet;

(ii) Change in status (active or inactive) of any aircraft as an aircraft water system as defined in § 141.801; and

(iii) Change to the type and location of any supplemental treatment equipment added to or removed from the water system.

(iv) Change to whether the aircraft water system can be physically disconnected or shut-off, or the flow of water prevented through the tap(s).

(3) All sampling results no later than 10 calendar days following the monitoring period in which the sampling occurred. The monitoring period is based on the monitoring frequency identified in the coliform sampling plan required under § 141.802. Routine disinfection and flushing events must be reported no later than 10 calendar days following the disinfection and flushing period in which the disinfection and flushing occurred. The disinfection and flushing period is based on the frequency identified in the operations and maintenance plan required under § 141.804.

(4) All events requiring notification to passengers or crew, or non-routine disinfection and flushing, or non-routine sampling, within 10 days of the event (e.g., notification of positive sample result by laboratory), including information on whether required notification was provided to passengers or crew or both.

(5) Failure to comply with the monitoring or disinfection and flushing requirements of this subpart within 10 calendar days of discovery of the failure.

(6) Changes in disinfection and flushing and coliform sampling frequencies no later than 10 days following the calendar month in which the change occurred. Changes to an aircraft's routine coliform sampling frequency and routine disinfection and flushing frequency must be included in the aircraft water system operation and maintenance plan that is included in the air carrier operations and maintenance program accepted by FAA in accordance with § 141.804.

(c) The air carrier must provide evidence of a self-inspection to the Administrator within 90 days of completion of the self-inspection required under § 141.808(b), including reporting whether all deficiencies were addressed in accordance with § 141.808(c). The air carrier must also report to the Administrator within 90 days that any deficiency identified during a compliance audit conducted in accordance with § 141.808(a) has been addressed. If any deficiency has not been addressed within 90 days of identification of the deficiency, the report must also include a description of the deficiency, an explanation as to why it has not yet been addressed, and a schedule for addressing it as expeditiously as possible.

(d) All information required to be reported to the Administrator under this subpart must be in an electronic format established or approved by the Administrator. If an air carrier is unable to report electronically, the air carrier may use an alternative approach that the Administrator approves.

§ 141.807 Recordkeeping requirements.

(a) The air carrier must keep records of bacteriological analyses for at least 5 years and must include the following information:

(1) The date, time, and place of sampling, and the name of the person who collected the sample;

(2) Identification of the sample as a routine, repeat, follow-up, or other special purpose sample;

(3) Date of the analysis;

(4) Laboratory and person responsible for performing the analysis;

(5) The analytical technique/method used; and

(6) The results of the analysis.

(b) The air carrier must keep records of any disinfection and flushing for at least 5 years and must include the following information:

(1) The date and time of the disinfection and flushing; and

(2) The type of disinfection and flushing (*i.e.*, routine or corrective action).

(c) The air carrier must keep records of a self-inspection for at least 10 years and must include the following information:

(1) The completion date of the self-inspection; and

(2) Copies of any written reports, summaries, or communications related to the self-inspection.

(d) The air carrier must maintain sampling plans and make such plans available for review by the Administrator upon request, including during compliance audits.

(e) The air carrier must maintain aircraft water system operations and maintenance plans in accordance with FAA requirements, and make such plans available for review by the Administrator upon request, including during compliance audits.

(f) The air carrier must keep copies of public notices to passengers and crew issued as required by this subpart for at least 3 years after issuance.

§ 141.808 Audits and inspections.

(a) The Administrator may conduct routine compliance audits as deemed necessary in providing regulatory oversight to ensure proper implementation of the requirements in this subpart. Compliance audits may include, but are not limited to:

(1) Bacteriological sampling of aircraft water system;

(2) Reviews and audits of records as they pertain to water system operations and maintenance such as log entries, disinfection and flushing procedures, and sampling results; and

(3) Observation of procedures involving the handling of finished water, watering point selection, boarding of water, operation, disinfection and flushing, and general maintenance and self-inspections of aircraft water system.

(b) Air carriers or their representatives must perform a self-inspection of all water system components for each aircraft water system no less frequently than once every 5 years.

(c) The air carrier must address any deficiency identified during compliance audits or routine self-inspections within 90 days of identification of the deficiency, or where such deficiency is identified during extended or heavy maintenance, before the aircraft is put back into service. This includes any deficiency in the water system's design, construction, operation, maintenance, or administration, as well as any failure or malfunction of any system component that has the potential to cause an unacceptable risk to health or that could affect the reliable delivery of safe drinking water.

§ 141.809 Supplemental treatment.

(a) Any supplemental drinking water treatment units installed onboard existing or new aircraft must be acceptable to FAA and FDA; and must be installed, operated, and maintained in accordance with the manufacturer's plans and specifications and FAA requirements.

(b) Water supplemental treatment and production equipment must produce water that meets the standards prescribed in this part.

§ 141.810 Violations.

An air carrier is in violation of this subpart when, for any aircraft water system it owns or operates, any of the following occur:

(a) It fails to perform any of the requirements in accordance with § 141.803 or § 141.804.

(b) It has an *E. coli*-positive sample in any monitoring period (routine and repeat samples are used in this determination).

(c) It fails to provide notification to passengers and crew in accordance with § 141.805.

(d) It fails to comply with the reporting and recordkeeping requirements of this subpart.

(e) It fails to conduct a self-inspection or address a deficiency in accordance with § 141.808.

(f) It fails to develop a coliform sampling plan in accordance with § 141.802, or fails to have and follow an operations and maintenance plan, which is included in a FAA accepted program in accordance with § 141.804.

[FR Doc. E9–24552 Filed 10–16–09; 8:45 am]

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Federal Register

Monday,
October 19, 2009

Part III

Securities and Exchange Commission

17 CFR Parts 210, 229 and 249

Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229 and 249

[Release Nos. 33–9072; 34–60813; File No. S7–06–03]

RIN 3235–AK48

Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: We are amending temporary rules that require companies that are non-accelerated filers to include in their annual reports, pursuant to rules implementing Section 404(b) of the Sarbanes-Oxley Act of 2002, an attestation report of their independent auditor on internal control over financial reporting for fiscal years ending on or after December 15, 2009. The amendments will extend the compliance date for filing attestation reports, so that a non-accelerated filer will be required to file the auditor's attestation report on internal control over financial reporting when it files an annual report for a fiscal year ending on or after June 15, 2010.

DATES: *Effective Date:* This rule is effective December 18, 2009. The effectiveness of §§ 210.2–02T and 229.308T, which currently terminates on June 30, 2010, is extended through December 15, 2010.

FOR FURTHER INFORMATION CONTACT: Steven G. Hearne, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are amending the following forms and temporary rules to extend the compliance dates for companies that are non-accelerated filers to include an attestation report of their independent auditor on internal control over financial reporting in their annual reports: Rule 2–02T of Regulation S–X,[1] Item 308T of Regulation S–K,[2] Item 4T of Form 10–Q,[3] Item 9A(T) of Form 10–K,[4] Item 15T of Form 20–F,[5] and Instruction 3T of General Instruction B.(6) of Form 40–F.[6]

[1] 17 CFR 210.2–02T.

[2] 17 CFR 229.308T.

[3] 17 CFR 249.308a.

[4] 17 CFR 249.310.

[5] 17 CFR 249.220f.

[6] 17 CFR 249.240f.

I. Background

On June 5, 2003,[7] the Securities and Exchange Commission adopted several amendments to its rules and forms implementing Section 404 of the Sarbanes-Oxley Act of 2002.[8] Among other things, these amendments require companies, other than registered investment companies, to include in their annual reports filed with us a report of management, and an accompanying auditor's attestation report, on the effectiveness of the company's internal control over financial reporting (''ICFR''). Subsequent to the adoption of those rules, the Commission took a number of steps to improve the effectiveness and efficiency of Section 404 implementation.[9] Among the steps taken, the Commission approved issuance by the PCAOB of Auditing Standard No. 5 (''AS No. 5''), which replaced Auditing Standard No. 2.[10] In addition, we issued interpretive guidance to assist management in complying with the ICFR evaluation and disclosure requirements.[11] The approval of PCAOB's AS No. 5 provided revised professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of ICFR. Our management guidance, in combination with AS No. 5, was intended to make ICFR audits and management evaluations of ICFR more cost-effective by being risk-based and scalable to a company's size and complexity.

In the Commission's most recent action, we postponed the Section 404(b) auditor attestation requirement for non-accelerated filers[12] for an additional year in order to allow time for the PCAOB to issue final staff guidance on auditing ICFR of smaller reporting companies and for the Commission staff to undertake a study to help determine whether AS No. 5 and our management guidance on evaluating ICFR are facilitating more cost-effective ICFR evaluations and audits for smaller public companies.[13] The PCAOB published staff guidance for auditors of smaller public companies on January 23, 2009 describing how auditors can apply the principles described in AS No. 5 and providing examples of approaches to particular issues that might arise in the audits of smaller, less complex public companies.[14]

The Commission directed the staff to conduct a study in order to help the Commission assess whether the new management guidance and AS No. 5 are having the intended effect of facilitating more cost-effective ICFR evaluations and audits for smaller reporting companies.[15] The study included a Web-based survey of companies that are subject to ICFR requirements, as well as in-depth interviews with financial statement users, auditors of issuers, and a subset of companies eligible to participate in the Web-based study. The study, analyzing the data provided by the survey, was recently completed by the staff and made public by the Commission on October 2, 2009.

Without today's amendments, a non-accelerated filer would be required to file the auditor's attestation report on ICFR when it files its annual report for a fiscal year ending on or after December 15, 2009. In light of the proximity in time of the publication of the staff study and the end of the year, and concerns that a significant number of smaller public companies may not have prepared to comply with Section 404(b) pending completion of the staff study, we are amending our rules to defer requiring the auditor's attestation report until a non-accelerated filer's annual report for its fiscal year ending on or after June 15, 2010.

The Commission believes that an auditor's attestation to a company's

[7] *See* Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, Release No. 33–8238 (June 5, 2003) [68 FR 36636].

[8] 15 U.S.C. 7262.

[9] For a more complete discussion of the Commission's actions in this area, see Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers, Release No. 33–8934 (June 26, 2008) [73 FR 38094] (the ''2008 Adopting Release'').

[10] *See* Order Approving Proposed Auditing Standard No. 5, An Audit of Internal Control Over Financial Reporting that is Integrated with an Audit of Financial Statements, a Related Independence Rule, and Conforming Amendments, Release No. 34–56152 (July 27, 2007) [72 FR 42141].

[11] *See* Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 33–8810 (June 20, 2007) [72 FR 35324].

[12] Although the term ''non-accelerated filer'' is not defined in our rules, we use it throughout this release to refer to an Exchange Act reporting company that does not meet the Rule 12b–2 [17 CFR 140.12b–2] definition of either an ''accelerated filer'' or a ''large accelerated filer.''

[13] *See* the 2008 Adopting Release in note 9 above.

[14] *See* ''Staff Views—An Audit of Internal Control that is Integrated with an Audit of the Financial Statements: Guidance for Auditors of Smaller Public Companies,'' (Jan. 23, 2009), *available at http://www.pcaobus.org.* Topics discussed in the PCAOB's guidance include: entity-level controls, risk of management override, segregation of duties and alternative controls, information technology controls, financial reporting competencies, and testing controls with less formal documentation.

[15] *See* ''Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements,'' *available at http://www.sec.gov.*

disclosure of its assessment on the effectiveness of the company's internal control is an important safeguard. The obligation of non-accelerated filers to comply with Section 404(b) has been deferred a number of times to more than five years after the date on which compliance was required of accelerated filers.[16] The Commission notes that all steps necessary to implement the requirements of Section 404 of the Sarbanes-Oxley Act have been completed, and non-accelerated filers should work with their auditors to comply with Section 404(b) for annual reports for fiscal years ending on or after June 15, 2010. The Commission does not expect to further defer the obligation of non-accelerated filers to comply with Section 404(b).

We believe at this point that only an immediate deferral of the current filing requirement for non-accelerated filers can address the uncertainty raised by the recent completion of the study and announcement of the new compliance date for the auditor attestation report requirement. In addition, because of the timing of the publication of the study, immediate implementation of Section 404(b) would require non-accelerated filers and their auditors to plan for the auditor attestation under compressed timeframes, resulting in higher costs than would be required with more deliberative planning. Due to the significance and importance of Section 404(b) implementation by non-accelerated filers, especially for the first time, it is critical to provide non-accelerated filers with certainty regarding the filing requirements as soon as possible. On the basis of the timing constraints discussed above and the limited nature of the extension, the Commission, for good cause, finds that notice and solicitation of comment regarding the amendments to defer the filing requirement is impracticable, unnecessary or contrary to the public interest, and the extension is necessary or appropriate in the public interest and consistent with the protection of investors.[17]

II. Extension of Auditor Attestation Compliance Date for Non-Accelerated Filers

We are amending Item 308T of Regulation S–K, Rule 2–02T of Regulation S–X, and Forms 10–Q, 10–K, 20–F and 40–F to require non-accelerated filers to provide their auditor's attestation in their annual reports filed for fiscal years ending on or after June 15, 2010. Prior to that time, a non-accelerated filer continues to be required to state in its management report on ICFR that the company's annual report does not include an auditor attestation report.[18] In 2006, we adopted a temporary rule[19] that provided that the management report included in a non-accelerated filer's annual report that did not contain the auditor's attestation report would be deemed ''furnished'' rather than ''filed'' and not be subject to liability under Section 18 of the Exchange Act.[20] In 2008 we extended the temporary rule.[21] In light of our action to extend the date for compliance with Section 404(b) to fiscal years ending on or after June 15, 2010, we are likewise extending the temporary rule to treat the management report as ''furnished'' instead of ''filed'' for reports that do not include an auditor's attestation in reliance upon the extension of the compliance date.

The revised compliance dates for the Section 404 internal control requirements are presented in the table below:

Filer Status		Compliance Dates for the Internal Control Over Financial Reporting Requirements	
		Management report on ICFR	Auditor attestation on management's report on ICFR
U.S. Issuer	Non-accelerated filer (public float under $75 million).	Annual reports for fiscal years ending on or after December 15, 2007.	Annual reports for fiscal years ending on or after June 15, 2010.
U.S. Issuer	Large accelerated filer and accelerated filer (public float above $75 million).	Annual reports for fiscal years ending on or after November 15, 2004.	Annual reports for fiscal years ending on or after November 15, 2004.
Foreign private issuer	Non-accelerated filer (public float under $75 million).	Annual reports for fiscal years ending on or after December 15, 2007.	Annual reports for fiscal years ending on or after June 15, 2010.
Foreign private issuer	Accelerated filer (public float above $75 million and below $700 million).	Annual reports for fiscal years ending on or after July 15, 2006.	Annual reports for fiscal years ending on or after July 15, 2007.
Foreign private issuer	Large accelerated filer (public float above $700 million).	Annual reports for fiscal years ending on or after July 15, 2006.	Annual reports for fiscal years ending on or after July 15, 2006.
U.S. or Foreign private issuer	Newly public company	Second annual report	Second annual report.

[16] Accelerated filers were initially expected to comply with the auditor attestation requirement in annual reports filed on or after June 15, 2004.

[17] *See* Section 553(b)(3)(B) of the Administrative Procedure Act [5 U.S.C. 553(b)(3)(B)] (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest''). In addition, the Commission notes that the U.S. public companies subject to all of the requirements of Section 404 represent an overwhelming majority of the market capitalization of the U.S. equity securities market.

[18] *See* Item 308T(a)(4) of Regulation S–K, Item 15T(b)(4) of Form 20–F and Instruction 3T to the Instructions to paragraphs (b), (c), (d), and (e) of General Instruction B.(6) of Form 40–F.

[19] *See* Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies, Release No. 33–8760 (Dec. 15, 2006) [71 FR 76580].

[20] Section 18 of the Exchange Act [15 U.S.C. 78r] imposes liability on any person who makes or causes to be made in any application or report or document filed under the Act, or any rule thereunder, any statement that ''was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact.'' As a result of temporary Item 308T of Regulation S–K and the temporary amendments to Forms 20–F and 40–F, however, during the applicable periods, management's report would be subject to liability under this section only in the event that a non-accelerated filer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

[21] *See* the 2008 Adopting Release in note 9 above.

III. Paperwork Reduction Act

In connection with our earlier proposal and adoption of the rules and amendments implementing the Section 404 requirements,[22] we submitted cost and burden estimates of the collection of information requirements of the amendments to the Office of Management and Budget (''OMB''). We published a notice requesting comment on the collection of information requirements in the proposing release for those rule amendments. We submitted these requirements to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (''PRA'')[23] and received approval of these estimates. We do not believe that the amendments will result in any change in the collection of information requirements of the amendments implementing Section 404 and we previously received no comments suggesting the amendments would result in any change. Therefore, we are not revising our PRA burden and cost estimates submitted to the OMB.

IV. Cost-Benefit Analysis

A. Benefits

The amendments postpone the date by which a non-accelerated filer would be required to include in its annual report an auditor attestation report on ICFR. As a result, non-accelerated filers will be required to complete only management's assessment of compliance with the Section 404 requirements during the deferral period. We believe that the additional time will benefit non-accelerated filers and could thereby indirectly benefit investors in non-accelerated filers by easing the burden on those companies as follows:

- Providing non-accelerated filers more time, in light of the uncertainty in the timing due to the recent completion of the study and the announcement, to better prepare for compliance with the Section 404(b) requirements; and
- Providing more time for the Section 404(b) audit to be properly planned, scoped and executed.

B. Costs

Investors in non-accelerated filers will have to wait longer than they would in the absence of the deferral for the assurances provided by the auditor's attestation report and the added investor confidence that could result from obtaining an independent Section 404(b) attestation. The amendments may extend the existing risk that, without the auditor's attestation report, some non-accelerated filers may erroneously conclude that the company's ICFR is effective, when an ICFR audit might reveal that it is not. In addition, some companies may continue to conduct an assessment that is not as thorough, careful and as appropriate to the company's circumstances as they would perform if the auditor were also conducting an audit of ICFR. Finally, the amendments may also extend the existing risk that weaknesses in a company's ICFR will go undetected for a longer period of time.

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[24] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b)[25] of the Securities Act and Section 3(f)[26] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

We expect that this additional extension of the auditor attestation report requirement will promote capital formation and efficiency by making the implementation process more efficient and less costly for non-accelerated filers by:

- Providing non-accelerated filers more time to prepare for compliance with the Section 404(b) requirements; and
- Providing more time for the Section 404(b) audit to be properly planned, scoped and executed.

We acknowledge, however, that it is possible for the deferral of the auditor attestation requirement to cause some investors to have less confidence in the financial reports of non-accelerated filers, and that this could possibly make it more difficult for these companies to raise capital in the public markets.

The additional extension for non-accelerated filers should have no impact on competition between non-accelerated filers, as the extension is being provided to all non-accelerated filers. It is possible that a competitive impact could result from the differing treatment of non-accelerated filers and larger companies that already have been complying with the Section 404 requirements, but we have not received any information suggesting that this type of impact has occurred as a result of prior extensions.

VI. Statutory Authority and Text of the Amendments

The amendments described in this release are made under the authority set forth in Section 19 of the Securities Act, Sections 3, 12, 13, 15, 23 and 36 of the Exchange Act, and Sections 3(a) and 404 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Amendments

■ For the reasons set out in the preamble, the Commission is amending title 17, chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

■ 2. Section 210.2–02T is amended by:

■ a. Removing the date ''December 15, 2009'' in paragraph (a) and adding in its place ''June 15, 2010''; and

■ b. Removing the date ''June 30, 2010'' in paragraph (b) and adding in its place ''December 15, 2010''.

[22] *See* Release Nos. 33–8238 in Note 7 and 33–8760 in Note 19 above.

[23] 44 U.S.C. 3501 *et seq.* and 5 CFR 1320.11.

[24] 15 U.S.C. 78w(a).

[25] 15 U.S.C. 77b(b).

[26] 15 U.S.C. 78c(f).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The authority citation for Part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l,* 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 229.308T is amended by:

■ a. Removing the date ''December 15, 2009'' in the ''Note to Item 308T'' and adding in its place ''June 15, 2010''; and

■ b. Removing the date ''June 30, 2010'' in paragraph (c) and adding in its place ''December 15, 2010''.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Form 20–F (referenced in § 249.220f), Part II, Item 15T is amended by:

■ a. Removing the date ''December 15, 2009'' in paragraph (2) to the ''Note to Item 15T'' and adding in its place ''June 15, 2010''; and

■ b. Removing the date ''June 30, 2010'' in paragraph (d) and adding in its place ''December 15, 2010''.

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 7. Form 40–F (referenced in § 249.240f) is amended by:

■ a. Removing the date ''December 15, 2009'' in ''Instruction 3T(2)'' to the ''Instructions to paragraphs (b), (c), (d) and (e) of General Instruction B.(6)'' and adding in its place ''June 15, 2010''; and

■ b. Removing the date ''June 30, 2010'' in the paragraph following ''Instruction 3T'' to the ''Instructions to paragraphs (b), (c), (d), and (e) of General Instruction B.(6)'' and adding in its place ''December 15, 2010''.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 8. Form 10–Q (referenced in § 249.308a) is amended by revising Item 4T to Part I to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part I—Financial Information

* * * * *

Item 4T. Controls and Procedures.

(a) If the registrant is neither a large accelerated filer nor an accelerated filer as those terms are defined in § 240.12b–2 of this chapter, furnish the information required by Items 307 and 308T(b) of Regulation S–K (17 CFR 229.307 and 229.308T(b)) with respect to a quarterly report that the registrant is required to file for a fiscal year ending on or after December 15, 2007 but before June 15, 2010.

(b) This temporary Item 4T will expire on December 15, 2010.

* * * * *

■ 9. Form 10–K (referenced in § 249.310) is amended by:

■ a. Removing the date ''December 15, 2009'' in paragraph (a) to Item 9A(T) to Part II and adding in its place ''June 15, 2010''; and

■ b. Removing the date ''June 30, 2010'' in paragraph (b) to Item 9A(T) to Part II and adding in its place ''December 15, 2010''.

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Dated: October 13, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–24990 Filed 10–16–09; 8:45 am]

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Federal Register

Monday,
October 19, 2009

Part IV

The President

Executive Order 13515—Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs

Federal Register
Vol. 74, No. 200
Monday, October 19, 2009

Presidential Documents

Title 3—

The President

Executive Order 13515 of October 14, 2009

Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The more than 16 million Asian Americans and Pacific Islanders (AAPIs) across our country have helped build a strong and vibrant America. The AAPI communities represent many ethnicities and languages that span generations, and their shared achievements are an important part of the American experience. They have started businesses and generated jobs, including founding some of our Nation's most successful and innovative enterprises. The AAPI communities have made important contributions to science and technology, culture and the arts, and the professions, including business, law, medicine, education, and politics.

While we acknowledge the many contributions of the AAPI communities to our Nation, we also recognize the challenges still faced by many AAPIs. Of the more than a million AAPI-owned businesses, many firms are small sole-proprietorships that continue to need assistance to access available resources such as business development counseling and small business loans. The AAPI community also continues to face barriers to employment and workplace advancement. Specific challenges experienced by AAPI subgroups include lower college-enrollment rates by Pacific Islanders than other ethnic groups and high poverty rates among Hmong Americans, Cambodian Americans, Malaysian Americans, and other individual AAPI communities. Additionally, one in five non-elderly AAPIs lacks health insurance.

The purpose of this order is to establish a President's Advisory Commission on Asian Americans and Pacific Islanders and a White House Initiative on Asian Americans and Pacific Islanders. Each will work to improve the quality of life and opportunities for Asian Americans and Pacific Islanders through increased access to, and participation in, Federal programs in which they may be underserved. In addition, each will work to advance relevant evidence-based research, data collection, and analysis for AAPI populations and subpopulations.

Sec. 2. *President's Advisory Commission on Asian Americans and Pacific Islanders.* There is established in the Department of Education the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission).

(a) *Mission and Function of the Commission.* The Commission shall provide advice to the President, through the Secretaries of Education and Commerce, as Co-Chairs of the Initiative described in section 3 of this order, on: (i) the development, monitoring, and coordination of executive branch efforts to improve the quality of life of AAPIs through increased participation in Federal programs in which such persons may be underserved; (ii) the compilation of research and data related to AAPI populations and subpopulations; (iii) the development, monitoring, and coordination of Federal efforts to improve the economic and community development of AAPI businesses; and (iv) strategies to increase public and private-sector collaboration, and community involvement in improving the health, education, environment, and well-being of AAPIs.

(b) *Membership of the Commission.* The Commission shall consist of not more than 20 members appointed by the President. The Commission shall include members who: (i) have a history of involvement with the AAPI communities; (ii) are from the fields of education, commerce, business, health, human services, housing, environment, arts, agriculture, labor and employment, transportation, justice, veterans affairs, and economic and community development; (iii) are from civic associations representing one or more of the diverse AAPI communities; or (iv) have such other experience as the President deems appropriate. The President shall designate one member of the Commission to serve as Chair, who shall convene regular meetings of the Commission, determine its agenda, and direct its work.

(c) *Administration of the Commission.* The Secretary of Education, in consultation with the Secretary of Commerce, shall designate an Executive Director for the Commission. The Department of Education shall provide funding and administrative support for the Commission to the extent permitted by law and within existing appropriations. Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the ''Act''), may apply to the administration of the Commission, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary of Education, in accordance with the guidelines issued by the Administrator of General Services.

(d) *Termination Date.* The Commission shall terminate 2 years from the date of this order, unless renewed by the President.

Sec. 3. *White House Initiative on Asian Americans and Pacific Islanders.* There is established the White House Initiative on Asian Americans and Pacific Islanders (Initiative), a Federal interagency working group whose members shall be selected by their respective agencies. The Secretary of Commerce and the Secretary of Education shall serve as the Co-Chairs of the Initiative. The Executive Director of the Commission established in section 2 of this order shall also serve as the Executive Director of the Initiative and shall report to the Secretaries on Initiative matters.

(a) *Mission and Function of the Initiative.* The Initiative shall work to improve the quality of life of AAPIs through increased participation in Federal programs in which AAPIs may be underserved. The Initiative shall advise the Co-Chairs on the implementation and coordination of Federal programs as they relate to AAPIs across executive departments and agencies.

(b) *Membership of the Initiative.* In addition to the Co-Chairs, the Initiative shall consist of senior officials from the following executive branch departments, agencies, and offices:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of the Interior;

(vi) the Department of Agriculture;

(vii) the Department of Labor;

(viii) the Department of Housing and Urban Development;

(ix) the Department of Transportation;

(x) the Department of Energy;

(xi) the Department of Health and Human Services;

(xii) the Department of Veterans Affairs;

(xiii) the Department of Homeland Security;

(xiv) the Office of Management and Budget;

(xv) the Environmental Protection Agency;

(xvi) the Small Business Administration;

(xvii) the Office of Personnel Management;

(xviii) the Social Security Administration;

(xix) the White House Office of Cabinet Affairs;

(xx) the White House Office of Intergovernmental Affairs and Public Engagement;

(xxi) the National Economic Council;

(xxii) the Domestic Policy Council;

(xxiii) the Office of Science and Technology Policy; and

(xxiv) other executive branch departments, agencies, and offices as the President may, from time to time, designate.

At the direction of the Co-Chairs, the Initiative may establish subgroups consisting exclusively of Initiative members or their designees under this section, as appropriate.

(c) *Administration of the Initiative.* The Department of Education shall provide funding and administrative support for the Initiative to the extent permitted by law and within existing appropriations. The Co-Chairs shall convene regular meetings of the Initiative, determine its agenda, and direct its work.

(d) *Federal Agency Plans and Interagency Plan.* Each executive department and agency designated by the Initiative shall prepare a plan (agency plan) for, and shall document, its efforts to improve the quality of life of Asian Americans and Pacific Islanders through increased participation in Federal programs in which Asian Americans and Pacific Islanders may be underserved. Where appropriate, this agency plan shall address, among other things, the agency's efforts to:

(i) identify Federal programs in which AAPIs may be underserved and improve the quality of life for AAPIs through increased participation in these programs;

(ii) identify ways to foster the recruitment, career development, and advancement of AAPIs in the Federal Government;

(iii) identify high-priority action items for which measurable progress may be achieved within 2 years to improve the health, environment, opportunity, and well-being of AAPIs, and implement those action items;

(iv) increase public-sector, private-sector, and community involvement in improving the health, environment, opportunity, and well-being of AAPIs;

(v) foster evidence-based research, data-collection, and analysis on AAPI populations and subpopulations, including research and data on public health, environment, education, housing, employment, and other economic indicators of AAPI community well-being; and

(vi) solicit public input from AAPI communities on ways to increase and improve opportunities for public participation in Federal programs considering a number of factors, including language barriers.

Each agency, in its plan, shall provide appropriate measurable objectives and, after the first year, shall provide for the assessment of that agency's performance on the goals set in the previous year's plan. Each agency plan shall be submitted to the Co-Chairs by a date to be established by the Co-Chairs. The Co-Chairs shall review the agency plans and develop for submission to the President a Federal interagency plan to improve the quality of life of AAPIs through increased participation in Federal programs in which such persons may be underserved. Actions described in the Federal interagency plan shall address improving access by AAPIs to Federal programs and fostering advances in relevant research and data.

Sec. 4. *General Provisions.*

(a) This order supersedes Executive Order 13125 of June 7, 1999, and Executive Order 13339 of May 13, 2004.

(b) The heads of executive departments and agencies shall assist and provide information to the Commission, consistent with applicable law, as may be necessary to carry out the functions of the Commission. Each executive department and agency shall bear its own expenses of participating in the Commission.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) For purposes of this order, the term ''Asian American and Pacific Islander'' includes persons within the jurisdiction of the United States having ancestry of any of the original peoples of East Asia, Southeast Asia, or South Asia, or any of the aboriginal, indigenous, or native peoples of Hawaii and other Pacific Islands.

(f) This order 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.

THE WHITE HOUSE,
October 14, 2009.

[FR Doc. E9–25268
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Federal Register

Vol. 74, No. 200

Monday, October 19, 2009

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The United St23ates Government Manual	**741–6000410 vc**
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Privacy Act Compilation	**741–6064**
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FEDERAL REGISTER PAGES AND DATE, OCTOBER

50671–50910 1
50911–51068 2
51069–51220 5
51221–51440 6
51441–51732 7
51733–52128 8
52129–52382 9
52383–52664 13
52665–52862 14
52863–53144 15
53145–53396 16
53397–53638 19

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8424 50671
8425 51221
8426 51223
8427 51441
8428 51443
8429 51445
8430 51733
8431 51735
8432 51737
8433 51739
8434 52383
8435 52863
8436 53145
8437 53147
8438 53149

Executive Orders:
13511 50909
13512 50911
13513 51225
13514 52117
13515 53635

Administrative Orders:
Presidential Determinations:
No. 2010–01 of October 8, 2009 52865
Presidential Determinations:
No. 2009–31 of September 29, 2009 50913
No. 2009–32 of September 30, 2009 52385

5 CFR

2411 50673
2415 51741
2416 51741
2424 51741
2429 51741

6 CFR

5 50902

7 CFR

246 51745
354 50915
360 53397
361 53397
922 53400
927 52665
981 50681
1205 51069
1209 50915

Proposed Rules:
305 53424
984 52154
1205 51094
4280 51714

8 CFR

274a 51447

9 CFR

Proposed Rules:
2 50738
391 51800
590 51800
592 51800

10 CFR

50 53402
72 52387
73 52667
452 52867
1021 52129

Proposed Rules:
51 51522
72 52430
851 53190

12 CFR

204 52873
229 52875
915 51452
1212 51073
1261 51452

Proposed Rules:
201 51806
327 .....51062, 51063, 52697
985 50926
989 50926
1273 50926
1274 50926

13 CFR

120 51229
124 51229

14 CFR

1 53368
21 53368
25 51759
39 .....50683, 50686, 50688, 50690, 50692, 51464, 52391, 52393, 52395, 52877, 53151, 53153, 53154, 53156, 53159
43 53368
45 53368
71 .....52130, 52131, 52398, 52399, 53160, 53161, 53162, 53163, 53402, 53403,53404, 53405, 53406, 53407, 53408
73 51076
93 .....52132, 52134
95 50920
97 .....50696, 50698

Proposed Rules:
25 .....50926, 51813, 52698
39 .....52156, 52431, 53430, 53433, 53436, 53438, 53440, 53442

71 .....50928, 51098, 51523, 51524, 52702, 52703, 52704, 52705

15 CFR

730.....52880
734.....52880
736.....52880
738.....52880
740.....52880
742.....52880
744.....52880
772.....52880
774.....52880
902.....50699

Proposed Rules:

90.....51526
922.....50740

16 CFR

255.....53124

Proposed Rules:

310.....52914
610.....52915

17 CFR

210.....53628
229.....53628
240.....52358
242.....52358
249.....52358, 53628
270.....52358

Proposed Rules:

1.....52434
220.....53114
229.....52374, 53086
230.....52374
239.....52374, 53086
240.....52374, 53086
242.....52374
249.....52374, 53086
270.....52374
274.....53086
275.....52374

19 CFR

4.....52675
111.....52400
122.....52675
123.....52675
192.....52675

Proposed Rules:

113.....52928
191.....52928

20 CFR

Proposed Rules:

404.....51229, 52706
416.....52706
655.....50929

21 CFR

510.....53164
522.....53164
558.....52885
866.....52136
878.....53165
1308.....51234

Proposed Rules:

4.....50744, 51099

22 CFR

41.....51236
226.....51762

23 CFR

950.....51762

24 CFR

Proposed Rules:

5.....52931
200.....52354
908.....52931

25 CFR

542.....52138
543.....52138

26 CFR

1.....50705, 53004
54.....51237, 51664
301.....52677
602.....50705, 53004

Proposed Rules:

1.....50758
54.....51710
301.....51527, 52708

27 CFR

9.....51772

Proposed Rules:

28.....52937
44.....52937

29 CFR

403.....52401
408.....52401
2590.....51664
4022.....52886

Proposed Rules:

501.....50929
780.....50929
788.....50929

30 CFR

950.....52677

Proposed Rules:

70.....52708
71.....52708
90.....52708

31 CFR

1.....51777

33 CFR

100.....51778, 52139
110.....51779
117 .....50706, 51077, 52139, 52143, 52887, 52888, 52890, 53409
147.....52139
155.....52413
157.....52413
165 .....50706, 50922, 51465, 52139, 52686, 53410

Proposed Rules:

100.....51243
117.....52158
151.....51245, 52941
155.....51245
160.....51245

36 CFR

7.....51237
Ch. XII.....51004

Proposed Rules:

7.....51099
242.....52712

37 CFR

1.....52686
370.....52418

38 CFR

Proposed Rules:

36.....51103

39 CFR

20.....52144
111.....52147
3020 .....50708, 51078, 51467

Proposed Rules:

3001.....51815
3005.....51815
3050.....52942

40 CFR

52 .....51240, 51783, 51792, 51795, 52427, 52691, 52693, 52891, 52894, 53167
60.....51368, 51950
70.....51418
71.....51418
141.....53590
180 .....51470, 51474, 51481, 51485, 51490, 52148, 53174

Proposed Rules:

52 .....50930, 50936, 51246, 51249, 51535, 51823, 51824, 52441, 52716, 52717, 52942, 53193, 53198
55.....50939
60.....52723
61.....52723
63.....52723
81.....53198
82.....53445
86.....51252
97.....52717
271.....52161
600.....51252

42 CFR

412.....50712, 51496
413.....51496
415.....51496
485.....51496
489.....51496

44 CFR

64.....51082, 53179

45 CFR

144.....51664
146.....51664
148.....51664

Proposed Rules:

160.....51698
164.....51698

46 CFR

162.....52413
501.....50713
502.....50713
503.....50713
504.....50713
506.....50713
508.....50713
515.....50713
520.....50713
525.....50713
530.....50713
531.....50713
535.....50713
540.....50713
545.....50713
550.....50713
551.....50713
555.....50713
560.....50713
565.....50713

Proposed Rules:

162.....52941

47 CFR

73 .....50735, 52151, 53181
74.....53181

48 CFR

Ch. 1.....52846, 52861
2.....52847
4.....52847
5.....52860
6.....52849
7.....52847
10.....52847
12.....52851
13.....52847
15.....52852, 52853
16.....52856
18.....52847, 52859
26.....52847
31.....52853
52 .....52847, 52851, 52853, 52860
203.....53412
204.....52895
205.....52895
209.....52895
225.....52895, 53413
241.....52895
244.....52895
252.....53413
503.....51510
552.....51510

Proposed Rules:

9.....51112
12.....51112
52.....51112
Ch. 13.....52542

49 CFR

107.....53182
171.....53182
172 .....52896, 53182, 53413
173.....53182
174.....53182, 53413
180.....53182
665.....51083
1001.....52900
1002.....52900
1003.....52900
1007.....52900
1011.....52900
1012.....52900
1016.....52900
1100.....52900
1102.....52900
1103.....52900
1104.....52900
1105.....52900
1109.....52900
1110.....52900
1113.....52900
1114.....52900
1116.....52900
1118.....52900
1132.....52900
1139.....52900
1150.....52900
1152.....52900
1177.....52900
1180.....52900
1240.....52900

1241 52900
1242 52900
1243 52900
1245 52900
1246 52900
1248 52900
1253 52900
1260 52900
1261 52900
1262 52900
1263 52900
1264 52900
1265 52900
1266 52900
1267 52900
1268 52900
1269 52900

Proposed Rules:

531 51252
533 51252
537 51252
538 51252

50 CFR

17 ....51988, 52014
32 50736
226 52300
622 50699
635 51241
648 ....51092, 51512
679 ....50737, 51242, 51512, 51514, 51515, 51798, 52152, 52912
680 51515

Proposed Rules:

17 ....51825, 52066, 52612
36 52110
100 52712
224 53454
300 53455
648 50759
665 50944

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 1707/P.L. 111–73

Enhanced Partnership with Pakistan Act of 2009 (Oct. 15, 2009; 123 Stat. 2060)

Last List October 15, 2009

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