Federal Register

12–28–09 Monday
Vol. 74 No. 247 Dec. 28, 2009

Pages 68477–68660

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

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 37

[Docket No. DHS–2006–0030]

RIN 1601–AA37

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule; stay.

SUMMARY: Pursuant to the Department of Homeland Security's REAL ID regulations, States must be in material compliance with the REAL ID ACT of 2005, 49 U.S.C. 30301 note, by January 1, 2010. This final rule stays that date. Any new material compliance dates will be announced in a future **Federal Register** document.

DATES: Effective on December 28, 2009, 6 CFR 37.51(b) is stayed from January 1, 2010, until further notice. The Department of Homeland Security will lift the stay and announce any new compliance dates by publication in a document in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Steve Kozar, Office of State-Issued Identification Support, Screening Coordination Office, Department of Homeland Security, Washington, DC 20528 (202) 447–3368.

SUPPLEMENTARY INFORMATION: The REAL ID Act of 2005 (the Act) [1] prohibits Federal agencies, effective May 11, 2008, from accepting a driver's license or personal identification card for any official purpose unless the license or card has been issued by a State that is meeting the requirements set forth in the Act. Section 205(b) of the Act authorizes the Secretary of Homeland Security to grant States extensions of time to meet the requirements of the Act if the State provides adequate justification for noncompliance.

On January 29, 2008, DHS promulgated a final rule implementing the requirements of the Act. *See* 73 FR 5272; *also* 6 CFR part 37. The final rule extended the initial compliance date from May 11, 2008 to May 11, 2011. The final rule allowed States to apply for two extensions to meet these requirements—the first extension, given to States in March 2008, is set to expire on December 31, 2009. States may request an extension that would give States until May 11, 2011 to fully comply with the Act and the implementing regulations.

Based on ongoing communications with the States throughout the development of the REAL ID program, a large majority of States and territories—46 of 56—have informed DHS that they will not be able to meet the REAL ID material compliance deadline. To avoid the unnecessary disruption of commercial air travel over the upcoming holiday season that would result if Federal agencies cannot accept State-issued identification cards from travelers beginning January 1, 2010, the Secretary of Homeland Security, under the authority granted to her under section 205(b) of the Act, is staying the material compliance deadline of January 1, 2010, until further notice. Although the material compliance date has been stayed, the full compliance date of May 11, 2011, remains in effect.

This stay is a temporary approach, but is not an acceptable solution over the long-term. DHS continues to urge Congress to enact a permanent legislative solution to fulfill this key 9/11 Commission recommendation. That is why Secretary Napolitano has supported the efforts of Governors and Congress to enact PASS ID, which puts States on the path to implementing national security standards for State identification cards that will enhance security across the country.

II. Regulatory Analyses

A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(B). As noted earlier in this preamble, DHS has communicated extensively with States throughout the development of the REAL ID program. Based on these communications, and the recent submissions from the States, DHS has determined that, although States are making significant enhancements to the security of their driver's licenses and State-issued identification documents, the vast majority of States cannot meet all of the statutorily-mandated requirements under the REAL ID Act by January 1, 2010. In order to minimize impact on the American public as well as to ensure States continue to invest in security enhancements, the January 1, 2010, material compliance deadline is stayed until further notice.

The REAL ID Act prohibits Federal agencies from accepting driver's licenses or personal identification cards for any official purpose unless the issuing State is meeting the requirements set forth in the Act. ''Official purpose'' is defined in both the Act and in the regulations to include boarding Federally-regulated commercial aircraft. If the vast majority of States are unable to meet the January 1, 2010 material compliance deadline, in the absence of an extension, Federal agencies, including TSA screeners, beginning January 1, 2010, would not be able to accept State-issued driver's licenses or identification cards from residents of these States for official purpose, including for use in boarding commercial aircraft. Travelers would have to use alternative, non-State-issued documents to demonstrate identity, as described in TSA's procedures, to pass through security at airports. All U.S. residents traveling by commercial aircraft would experience very significant travel delays; in fact, commercial aviation would be severely impacted. Such a disruption to air travel is not in the public's best interest in particular during the holiday season. It would also be contrary to the public interest, therefore, to seek public comment prior to extending the compliance date, given that such comments reasonably could not be

[1] The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109–13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

received and acted upon prior to the date.

Based on the above, DHS finds that pre-promulgation notice and comment for this rule would be impracticable, unnecessary, and contrary to the public interest. For this same reason, good cause exists to make this rule effective immediately upon publication in the **Federal Register.** *See* 5 U.S.C. 553(d)(3).

B. Executive Order 12866 (Regulatory Planning and Review)

This rule constitutes a ''significant regulatory action'' under Executive Order 12866, and therefore has been reviewed by the Office of Management and Budget. Under Executive Order 12866, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; 3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this rule eliminates the material compliance date and is part of a previously published rule that received considerable public attention, this rule raises novel policy issues and, thereby, is subject to OMB review.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. This final rule, however, makes changes for which notice and comment are not necessary. Accordingly, DHS is not required to prepare a regulatory flexibility analysis. 5 U.S.C. 603, 604.

D. Paperwork Reduction Act

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

E. Executive Order 13132 (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.

F. 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 Unfunded Mandates Reform 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 million (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

G. Executive Order 13175 (Tribal Consultation)

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.

H. Executive Order 13211 (Energy Impact Analysis)

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 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 6 CFR Part 37

Document security, driver's licenses, identification cards, incorporation by reference, motor vehicle administrations, physical security.

The Amendments

■ For the reasons set forth above, the Department of Homeland Security amends 6 CFR part 37 as follows:

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

§ 37.51 [Amended]

■ 2. In Section 37.51, paragraph (b) is stayed from January 1, 2010 until further notice.

Janet Napolitano,

Secretary.

[FR Doc. E9–30638 Filed 12–24–09; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS-2008-0147]

Change in Disease Status of the Republic of Korea With Regard to Foot-and-Mouth Disease and Rinderpest

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to add the Republic of Korea to the list of regions that are considered free of rinderpest and foot-and-mouth disease (FMD). We are taking this action because we have conducted an evaluation and determined that the Republic of Korea is free of rinderpest and FMD. We are also adding the Republic of Korea to the list of regions that are subject to certain import restrictions on meat and meat products because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. These actions will update the disease status of the Republic of Korea with regard to rinderpest and FMD while continuing to protect the United States from an introduction of those diseases by providing additional requirements for meat and other animal products imported into the United States from the Republic of Korea.

DATES: *Effective Date:* January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Senior Staff

Veterinarian, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various communicable diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, classical swine fever, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all other parts of the world not listed. Section 94.11 of the regulations lists regions of the world that have been determined to be free of rinderpest and FMD, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest or FMD-affected regions.

On March 30, 2009, we published in the **Federal Register** a proposal[1] (74 FR 14093–14097, Docket No. APHIS-2008-0147) to amend the regulations by adding the Republic of Korea (South Korea) to the list in § 94.1 of regions declared free of FMD and rinderpest. We also proposed to add the Republic of Korea to the list in § 94.11 of regions that are declared to be free of these diseases, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest or FMD-affected regions. In addition, we published a notice of availability of an environmental assessment (74 FR 17115) on April 14, 2009 (see footnote 1).

We solicited comments concerning our proposal for 60 days ending May 29, 2009. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves certain rinderpest and FMD-related restrictions on the importation into the United States of ruminants, or fresh (chilled or frozen) meat or other products of ruminants, from the Republic of Korea. We have determined that approximately 2 weeks are needed to ensure that APHIS and Department of Homeland Security, Bureau of Customs and Border Protection, personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by adding the Republic of Korea to the list of regions considered to be free of rinderpest and FMD. This action, which was requested by the Republic of Korea, follows a risk assessment conducted by APHIS concluding that the Republic of Korea is free of both diseases and has the veterinary infrastructure in place to detect and effectively eradicate the diseases if necessary. The effect of the rule will be to remove certain rinderpest and FMD-related prohibitions and restrictions on the importation into the United States of ruminants, or fresh (chilled or frozen) meat or other products of ruminants, from the Republic of Korea. APHIS imposes such restrictions because an FMD or rinderpest outbreak in the United States has the potential for severe economic consequences. Although imports of swine and swine products typically would be allowed under APHIS' FMD and rinderpest regulations, those commodities are not eligible for importation from the Republic of Korea due to USDA regulations designed to prevent the introduction of diseases other than FMD and rinderpest.[2]

We do not anticipate that changing the FMD and rinderpest status of the Republic of Korea will have a significant economic impact on a substantial number of U.S. entities, large or small, because the volume of currently prohibited/restricted animals and animal products imported into the United States from the Republic of Korea is likely to be very small relative to overall U.S. supply of those commodities (production and net imports from all foreign sources). There are several reasons for this. First, the volume of U.S. imports from the Republic of Korea prior to March 20, 2000 (the date the Republic of Korea was removed from the list of regions considered to be free of FMD and rinderpest) was negligible. During the 3-year period from 1997 to 1999, the United States did not import any reportable amounts of ruminants or fresh (chilled or frozen) meat or other products of ruminants from the Republic of Korea, other than 1.3 metric tons of dairy products in 1998.

Second, the Republic of Korea produces less beef, milk, and pork than it consumes, and is therefore a net importer of these commodities. Given this fact, there will likely not be a significant volume of exports of those commodities to the United States.

Finally, APHIS' staff expects that Hanwoo beef, a premium-priced specialty meat produced from Korean native cattle, is likely to be the Republic of Korea's primary export to the United States. Because of its premium price, the market for Hanwoo beef is limited; it is likely to be sold to a niche market, such as Korean restaurants in the United States.

Importers, brokers, and others interested in importing Hanwoo beef, as well as restaurants intending to serve that product, are the U.S. entities most likely to be affected by the rule. They stand to benefit from the increased business activity. The number of these entities is unknown but it is likely to be very small, given the expected limited market for Hanwoo beef in the United States. The size of these entities is also unknown, although it is reasonable to assume that, as with U.S. businesses in general, most are small under the standards of the U.S. Small Business Administration. Therefore, this action should have no noticeable effect on U.S. beef producers, given the expected limited demand for Hanwoo beef.

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 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect and (2) does not require administrative proceedings

[1] To view the proposed rule, the risk evaluation, the environmental assessment and notice, and the finding of no significant impact, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0147*).

[2] APHIS' risk evaluation states that the animal health status of swine for diseases other than FMD has not been evaluated. In the absence of a favorable evaluation, live swine and swine-derived products will not be eligible to be imported from the Republic of Korea.

before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the removal of certain rinderpest and FMD-related prohibitions and restrictions on the importation into the United States of ruminants, or fresh (chilled or frozen) meat or other products of ruminants, from the Republic of Korea will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[3] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This final 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 in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

[3] See footnote 1.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

■ 2. In § 94.1, paragraph (a)(2) is amended by adding the words ''Republic of Korea,'' after the word ''Japan,''.

§ 94.11 [Amended]

■ 3. In § 94.11, paragraph (a) is amended by adding the words ''Republic of Korea,'' after the word ''Japan,''.

Done in Washington, DC, this 16th day of December 2009.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–30668 Filed 12–24–09: 12:36 pm]

BILLING CODE: 3410–34–S

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AH90

Supplemental Revenue Assistance Payments Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements specific requirements for the new Supplemental Revenue Assistance Payments Program (SURE) authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). SURE provides disaster assistance to eligible participants who have experienced qualifying crop production losses, or crop quality losses, or both, occurring in crop year 2008 through September 30, 2011. All crops for which crop insurance or noninsured crop disaster assistance program (NAP) coverage is available are eligible crops for SURE. To be eligible for SURE payments, participants must meet a risk management purchase requirement, with some exceptions, and have suffered a qualifying loss due to disaster. A qualifying loss is a loss of at least 10 percent of a crop of economic significance on a participant's farm in a disaster county (a county for which a Secretarial disaster declaration has been issued or a county contiguous to such a county), or on a participant's farm with an overall loss greater than 50 percent of normal production (expected revenue for all crops on the farm) due to disaster. This rule specifies how a qualifying loss is determined, how SURE payments are calculated, and how and when participants may apply for payment.

DATES: *Effective Date:* December 22, 2009.

FOR FURTHER INFORMATION CONTACT: Steven J. Peterson, Branch Chief, Disaster Assistance Branch, Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–5172; e-mail *Steve.Peterson@wdc.usda.gov.* Persons with disabilities who require alternative means of communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule implements specific requirements for the SURE program authorized by the 2008 Farm Bill (Pub. L. 110–246) and amendments to the 2008 Farm Bill contained in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329), an Act to Amend the Commodity Provisions of the Food, Conservation, and Energy Act of 2008 and for other purposes (Pub. L. 110–398), and the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–005, the Recovery Act). The basic core of the SURE program is specified in the 2008 Farm Bill. With the exception of the Recovery Act, the subsequent amendments were technical in nature; the amendments are discussed below.

Sections 12033 and 15101 of the 2008 Farm Bill authorize the Secretary of Agriculture (Secretary) to provide assistance to eligible participants with certain crop losses. Under this authority, FSA is establishing SURE, a new permanent disaster assistance program, providing payments to eligible participants who suffered a qualifying loss and who met the risk management purchase requirement.

FSA will administer SURE using funds from the Agricultural Disaster

Relief Trust Fund established under section 902 of the Trade Act of 1974 (19 U.S.C. 2497a), as specified in the 2008 Farm Bill. The disaster assistance programs authorized by the 2008 Farm Bill are permanent or ''standing'' disaster assistance programs, some of which have similar scope to previous ad hoc programs. The programs are provided for in two separate places in the 2008 Farm Bill. First, section 12033 adds a new section 531 to the Federal Crop Insurance Act (7 U.S.C. 1501–1524). Second, section 15101 adds sections 901, 902, and 903 to the Trade Act of 1974. The provisions of the two sections as enacted are identical except that the Trade Act of 1974 provisions contain the Trust Fund provisions. The two sections of the 2008 Farm Bill are considered to be interchangeable for the purposes of this rule.

SURE is one of five new standing disaster programs authorized by the 2008 Farm Bill. The five new programs are:

- Livestock Indemnity Program (LIP);
- Livestock Forage Disaster Program (LFP);
- Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (ELAP);
- Supplemental Revenue Assistance Payments Program (SURE); and
- Tree Assistance Program (TAP).

The programs are being implemented through separate rulemakings; regulations for each of the programs will be implemented in separate subparts of 7 CFR part 760. This rule implements SURE in 7 CFR part 760, subpart G. The LIP final rule, which was published in the **Federal Register** on July 2, 2009 (74 FR 31567–31578) implemented LIP in 7 CFR part 760, subpart E, and implemented general provisions applicable to more than one program in 7 CFR part 760, subpart B. The ELAP and LFP final rule, which was published in the **Federal Register** on September 11, 2009 (74 FR 46665–46683) implemented ELAP in 7 CFR part 760, subpart C, and implemented LFP in 7 CFR part 760, subpart D.

SURE covers some expected revenue or production losses not covered under other Supplemental Agricultural Disaster Assistance programs established by the 2008 Farm Bill. For example, losses to catfish, crawfish, and other aquaculture species are not covered by LIP, but are covered under SURE because they are eligible for NAP coverage. In other cases, losses are covered by the other programs but not by SURE. For example, losses to honey bees due to colony collapse disorder are covered by ELAP but not by SURE. Livestock, feed emergency, and grazing losses are not covered by SURE but are covered by LIP, ELAP, and LFP. Losses to tree crops (apples, citrus) are covered by SURE, while losses to trees that produce crops are covered by TAP.

Legislative Amendments to the SURE Program

Technical amendments made by legislation enacted after the 2008 Farm Bill included a clarification of terms and some newly defined terms, added the 10 percent actual production loss minimum of an economically significant crop to be a qualifying loss, excluded subsequently planted crops in most cases, specified that regional variations should be considered consistent with crop insurance and NAP in establishing average market prices, and allowed additional waivers or exceptions to the risk management purchase requirement for certain years.

The Recovery Act amendments allowed an additional waiver for the 2008 crop year only under certain situations and increased the amount of assistance for 2008 qualifying losses. It also authorized the Secretary discretion to provide equitable treatment for participants suffering multi-year losses and for participants who lacked access to insurance or NAP.

Terms Used in This Rule

This final rule uses the words ''producers'' and ''participants.'' Producers may apply for SURE. Participants are those producers that meet the requirements to be eligible producers to receive SURE payments.

Sections 12033 and 15101 of the 2008 Farm Bill include the words assistance, benefits, compensation, relief, and payments. The form of SURE assistance, benefit, relief, or compensation for eligible participants is a payment calculated as specified in this rule. Therefore, this rule uses the word payment to represent the assistance, benefit, relief, and compensation that participants will receive.

One part of the payment calculation is the guarantee or ''SURE guarantee'', which is a ''guaranteed'' level of revenue for the farm based on the planted or prevented planted acres, the yield, past production history, and the level of crop insurance selected, among other things. The SURE payment is based on 60 percent of the difference between this guarantee and the total revenue on the farm as calculated in accordance with the 2008 Farm Bill.

In general, the word ''production'' represents the quantity or amount of a crop produced (or harvested). In some terms that include the word ''production'' it represents the dollar value or the price of the crop, such as ''normal production on the farm'' which is defined in this rule. Because the production for the farm is the total of all the crops produced on the farm, which may be measured in different physical units, the total production of multiple crops on a farm is most sensibly represented in terms of dollar value rather than (for example) using bushels as the unit of measure for production on a farm that produces corn, hay, and catfish.

This rule defines ''salvage value'' as the dollar amount or equivalent value when the commodity cannot be sold in any recognized market for that crop. For example, popcorn that does not meet the standards for popcorn would have ''salvage value'' as livestock feed.

The word ''crop'' and ''commodity'' were used in the 2008 Farm Bill. This rule generally uses ''crop,'' except in cases where ''commodity'' must be used to be consistent with other regulations and programs.

Definitions

This rule includes terms defined or otherwise used in the 2008 Farm Bill as required to implement the SURE program. In some instances, terms defined in the 2008 Farm Bill have been modified based on agency interpretation and to add further clarity. For example, the term ''disaster county'' appears in the 2008 Farm Bill and specifies that a disaster county, in addition to meaning a county included in a Secretarial natural disaster declaration, or a county contiguous to such county, is any farm having actual production less than 50 percent of normal during a crop year. These regulations make clear that one farm having a loss of 50 percent or more does not make the farm or the county or counties in which the farm is or are located an actual disaster county. Rather, the disaster county term is defined to only include those counties that have a Secretarial natural disaster declaration or a county contiguous to such county (without regard to participant or farm losses).

Other clarifications to definitions in the 2008 Farm Bill include using consistent words and terms as specified in this rule, adding information such as citations, or otherwise clarifying the definition. For example, this involves using the word ''crop'' instead of the word ''commodity'' where appropriate, consistent references to ''crop insurance'' and ''crop insurance indemnity,'' and ''participant'' instead of ''producer.''

The definition of the term ''actual production history yield'' in the 2008 Farm Bill uses the term ''weighted.'' The

definition in this rule refers to an average instead of a weighted average. We did this to clarify that the weighting is done as part of the calculation of the SURE yield; the actual production history yield data from the NAP or RMA program is actual yield data, not weighted.

The definition of ''actual production on the farm'' was expanded to specifically include the calculation information, which was referred to in the definition in the 2008 Farm Bill. The definition deleted the term ''value of all crops produced on the farm'' as it would have been redundant because the calculations specify a component is the price of the crop or the value of inventory. The definition was also expanded to specify how value loss crops would be included in the calculation.

The definition of ''adjusted actual production history yield'' was expanded to specify the minimum amount, and specify that it is the ''average of the production history'' instead of the ''actual production history,'' to clarify that since the Farm Bill also specified that 4 years of production history are taken into account, that clearly should be an average rather than a sum.

The definition of ''adjusted NAP yield'' was expanded to specify the minimum amount, and specifying that it is the ''average of the production history'', rather than the NAP yield, to be consistent with the ways ''yield'' and ''production history'' are used in other terms in this rule.

The definition of ''counter-cyclical program payment yield'' was clarified to cite FSA implementing regulations instead of citing various sections of legislation.

''Crop of economic significance'' is defined in the 2008 Farm Bill as having a uniform meaning given it by the Secretary for certain purposes as specifically required by the 2008 Farm Bill. In this rule, a crop of economic significance means one that has contributed at least 5 percent of the total expected revenue of all of the participant's crops on the farm. That would appear to be a fair level at which a farmer might forego risk management measures because of the relative size of the crop. At this time, however, no dollar expectation has been set so as to require that the farm have expected marketings of a certain level to qualify a crop for SURE. However, the crop must be one which is the subject of normal marketings.

The definition of ''farm'' was clarified such that ''for sale'' means ''for normal commercial sale'' and was revised for aquaculture based on the requirements for the Aquaculture Grant Program, as specified in the Recovery Act. ''Normal'' commercial sale in this regard would mean sales in the normal channels of commerce and would not include, for example, ''sales'' to family members or sales from hobby farms.

The definition of ''noninsurable crop'' specifies that the crop is a ''commercially produced crop'' because NAP covered crops are commercially produced crops for which crop insurance is not available.

Some terms defined in this rule are terms used in the 2008 Farm Bill, but are not defined in the 2008 Farm Bill. For example, the term ''actual crop acreage'' is not defined in the 2008 Farm Bill; however, for the purpose of SURE, the term ''actual crop acreage'' is defined to mean that it includes all acreage of each crop planted or intended to be planted on a farm. As is explained below, the term ''farm'' is generally defined expansively in SURE to include all farming interests in which a producer has an interest, no matter where located. Another example is ''appraised production,'' which, when applicable, will be used in determining a farm's production or revenue. The term is defined in this rule as production determined by FSA, or an insurance provider approved by FCIC, that was unharvested, but which was determined to reflect the crop's yield potential at the time of appraisal. ''Aquaculture'' is defined to mean the reproduction and rearing of aquatic species in controlled or selected environments as specified in part 1437 of this title.

SURE Compared to Previous Disaster Programs

Some important differences between SURE and previous programs are that SURE payments are based on multi-crop farm revenue, rather than losses to a single crop, and that SURE is a ''permanent'' or ''standing'' program, for losses in the time period covered in the 2008 Farm Bill (coverage begins with the 2008 crop, and losses after September 30, 2011 are not covered). Previous ad hoc crop disaster programs were typically limited to specific crops damaged or destroyed during a specific period of time in specific locations. In contrast to previous programs that addressed losses to particular crops, SURE is an umbrella type of farm revenue program that compliments and augments protections that participants have from various risk management purchases. Under previous crop disaster programs, producers typically requested assistance for particular farm numbers, or units. Under SURE, a participant's assistance will be based on a ''whole farm,'' which means the aggregation of all crops in all counties in which the participant has an interest that were planted or intended to be planted for harvest. Participants must have been entitled to an ownership share of the crop; contract growers are not eligible participants for SURE unless they had an ownership share and meet all other eligibility criteria.

Payments will not be based on losses to individual crops, although a loss of a crop of economic significance is an eligibility requirement.

Funding for the previous ad hoc crop disaster programs was limited and subject to a specific appropriation. Funding for SURE is provided through the Agricultural Disaster Relief Trust Fund and payments will be distributed to eligible participants as they qualify for assistance.

Unlike some FSA and Commodity Credit Corporation (CCC) programs, participants do not need to pre-enroll or sign up in advance (prior to the loss) for SURE coverage in order to be eligible. Participants who believe they may be eligible for a SURE payment who satisfy all eligibility criteria can submit an application for payment. Such application will be reviewed to determine if the participant meets such eligibility criteria.

Qualifying Loss

To receive SURE payments, participants must have had a qualifying loss. That means eligible participants must have at least a 10 percent loss of one crop of economic significance due to disaster on either:

(1) A farm in a disaster county (a county for which a Secretarial disaster designation has been issued or in a county contiguous to a county with a Secretarial disaster designation), or

(2) A farm not located in a disaster county or a county contiguous to such a designated disaster county, that has an overall production loss greater than or equal to 50 percent of the normal production on the farm (expected revenue for all crops on the farm) due to disaster.

A ''crop of economic significance'' is one that generates or was expected to generate at least 5 percent of the total expected revenue of all of the crops on the participant's farm for the current year. While other FSA programs may use a higher percentage threshold in order to determine whether a crop is economically significant, SURE defines crop of economic significance as having at least 5 percent or more of the total expected revenue from all of the participant's crops on the farm and

thereby increases the likelihood that participants will have economically significant crops and be eligible for SURE.

A ''disaster county'' is one where there has been a Secretarial disaster declaration; it includes counties contiguous to such counties declared a disaster. Other kinds of disaster declarations or designations, such as a Presidential disaster declaration, are not relevant to SURE, according to the terms of the 2008 Farm Bill.

A farm includes all the crop acreage in all the counties where a participant has planted crops or intended to plant crops for harvest for commercial sale or on-farm livestock feeding. For aquaculture and honey, a farm includes all the acreage used for all aquaculture species, bees, and beehives intended to be harvested for sale by the eligible participant in all counties.

A farm not located in a ''disaster county'' may still be eligible for SURE if it incurs, during a crop year, a qualifying loss of production in which the actual production on the farm is less than 50 percent of the normal production of the farm. Such loss threshold is per farm, not per crop on a farm. The actual total production for the participant's farm, as measured by revenue from all crops and locations, must be less than 50 percent of the normal expected production to be a qualifying loss. A loss of 50 percent of one crop, or losses on one part of a farm where the farm has crops in several locations, will not necessarily be a qualifying loss if the other crops or locations or both had a less severe loss. For this category of qualifying loss, there is no requirement for a disaster declaration.

Risk Management Purchase Requirement

To be eligible for SURE payments, producers must meet certain risk management purchase requirements, with some exceptions. Those requirements are specified in 7 CFR part 760 subpart B, and apply to SURE.

The risk management purchase requirements specify that eligible participants must have purchased insurance for each insurable crop; a few exceptions allowed by the 2008 Farm Bill are discussed later in this section. An ''insurable commodity'' means an agricultural commodity for which the producer on the farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (FCIA) from the USDA's Risk Management Agency (RMA). A ''noninsurable commodity'' means a crop for which the eligible producers on a farm are eligible to obtain assistance through FSA's noninsured crop disaster assistance program (NAP). In general, to be eligible for SURE payments, participants must have obtained crop insurance or NAP coverage, as may be applicable, for all of their crops.

Producers who did not purchase required coverage are not eligible for benefits unless an exception applies. Certain waivers for ''socially disadvantaged farmers and ranchers,'' as well as ''limited resource farmers and ranchers,'' and ''beginning farmers or ranchers'' are provided by the 2008 Farm Bill.

For the 2008 crop year, otherwise eligible producers who paid a certain buy-in fee were provided an exemption from the risk management purchase requirement that would otherwise apply if the buy-in fee was paid by September 16, 2008. By an amendment to the 2008 Farm Bill, a second buy-in permitted participants to buy in for the 2008 crop year from February 17, 2009, up to May 18, 2009 to meet the risk management purchase requirement; however, the participant had to agree to buy crop insurance or NAP for the next crop year for the crops to which the buy-in applied. The buy-in fee was equal to the cost of the minimal catastrophic insurance coverage or NAP coverage, but did not, as with other buy-in exemptions in SURE, entitle the participant to such insurance or NAP coverage. Also, an amendment to the 2008 Farm Bill allows a 2009 crop buy-in if the 2009 Federal Crop Insurance Corporation (FCIC) sales closing date for a crop was prior to August 14, 2008. The deadline for the 2009 crop buy-in was January 12, 2009. In addition to these provisions, section 531(g)(5) of the FCIA (and the corresponding provisions of the Trade Act of 1974; 7 U.S.C. 1531(g) and 19 U.S.C. 2497(g), respectively) have some more general provisions allowing the Secretary discretion to grant equitable relief to certain persons who lack coverage. The buy-in fees were different for 2008 and 2009.

Specifically for SURE, and not for the other disaster programs, there are also the following ''de minimis'' exceptions to the risk management purchase requirement:

(1) Where a portion of the total acreage of a farm of the eligible producer is used to produce a crop that is not of economic significance on the farm, and

(2) Crops for which the required administrative fee to purchase NAP coverage for that crop on a particular farm exceeds 10 percent of the value of that coverage.

If a participant elects not to purchase risk management coverage for the crop because of one of the de minimis exceptions, such crop will not be included in the SURE guarantee and revenue calculations. The participant must elect the de minimis exception as part of the application for SURE payment.

If a producer is ineligible or otherwise barred from the risk management insurance program or NAP because of past violations and those insurance programs would otherwise be available to that producer absent such violations, that producer will also be ineligible for SURE.

Other circumstances preventing a producer from obtaining risk management coverage may be addressed on a case-by-case basis, and the Secretary or designee may determine a participant eligible for SURE even if FCIA or NAP coverage was not timely obtained. Section 760.106 ''Equitable Relief'' provides for such relief. For example, equitable relief may, at FSA's discretion, be considered for participants who failed to meet the requirements of this rule because the 2008 Farm Bill was enacted after the closing date for purchasing the applicable insurance. Another example may be relief for a participant who made a late planting decision due to weather-related causes. Relief will not be considered or granted for producers who are in the RMA ineligibility tracking system. In connection with equitable relief, however, producers have no entitlement to relief that is discretionary in nature and FSA's refusal to consider such relief or to grant a particular form of relief that is not particularly mandated by the 2008 Farm Bill or the program regulations will not be construed to be an adverse decision under either part 11 or 780 of this title.

If an RMA pilot or Adjusted Gross Revenue insurance program was the only insurance available in that area for that crop, buying that insurance program for that crop will ''count'' as meeting the risk management purchase requirement for that crop. However, producers are not required to purchase pilot or AGR insurance program coverage in order to meet the risk management purchase requirement. Rather, producers can elect not to obtain pilot or AGR insurance program coverage and meet the risk management purchase requirement by obtaining either NAP coverage or by paying the buy-in fee, as may be applicable.

Eligible Crops

Eligible crops include FCIC insured commodities and crops covered by

NAP, excluding acreage intended for grazing. (Grazing losses are covered by LFP, in regulations codified in 7 CFR part 760 subpart D.) SURE does not cover crops covered under LFP or ELAP. NAP is available for crops that are commercially produced for which the catastrophic level of crop insurance coverage is not available. Crops that are not grown commercially are not eligible for either crop insurance or NAP and therefore are not eligible for SURE. All crops for which a policy or plan of crop insurance or NAP coverage is available are eligible for production losses. Most crops are also eligible for quality losses except for value loss crops [1] and some specialty crops [2] because of the way normal losses are measured for those crops.

Producers who did not obtain risk management coverage for all eligible crops on a farm are ineligible for payment under SURE even if some crops had risk management coverage, unless an exception or waiver applies. For example, if a producer's farm produces insured corn and insured soybeans, and also hay, to be eligible for SURE payment, it is necessary for the producer to either buy insurance or NAP coverage on the hay or have made a ''buy-in,'' when such option was available as specified in subpart B of part 760. Producers who meet all the statutory conditions of eligibility, including risk management coverage, will qualify for payment. A producer who does not meet the risk management purchase requirement will not be eligible. A lack of eligibility is not a compliance issue; rather, such producer has merely failed to satisfy a statutory condition of eligibility.

In the case of a participant who met the risk management purchase requirement by purchasing crop insurance or NAP, the calculation of the SURE farm revenue and guarantee is based on the insured or NAP crops. For participants who are eligible through waivers and buy-ins, the calculation will explicitly exclude crops that would not be eligible for insurance or NAP. Therefore, there are provisions in this rule that exclude, for example, volunteer crops from the revenue or guarantee calculation. For participants who purchased crop insurance or NAP, those crops would clearly not be included because they were not insured (and cannot be insured). However, these provisions are in the rule to address the situation of calculating the farm revenue or guarantee of a participant who is eligible through a waiver or buy-in. Similarly, this rule excludes from the SURE guarantee and revenue calculation crops grown on land that is not eligible for crop insurance or NAP. For a participant who purchased crop insurance or NAP, those crops would clearly not be included because they were not insured (and cannot be insured). However, these provisions are in the rule to address the situation of calculating the farm revenue or guarantee of a participant who is eligible through a waiver or buy-in.

Independent of risk management purchase requirements and de minimis exceptions, certain items or losses are not covered for any participant and will not be included in payment calculation. These include home gardens, losses to crops that were not intended to be harvested in the applicable crop year, and losses to biomass byproducts of the crop such as corn stover or wheat straw.

Payment Limitations and Other General Requirements

All counties, owners, contract growers, lessees, crops, and losses must meet the eligibility criteria provided in this rule. False certifications will result in a denial of program eligibility and payments. General eligibility requirements, as specified in §§ 760.101 through 760.117, including recordkeeping requirements and required compliance with Highly Erodible Land Conservation and Wetland Conservation provisions, are similar to those for the previous ad hoc crop disaster programs and are applicable to SURE.

The 2008 Farm Bill limits how much a participant may receive from FSA disaster assistance programs.

- In applying payment limitations for 2008, no person, as defined and determined by the regulations in 7 CFR part 1400 in effect for 2008, may receive more than $100,000 total per crop year under ELAP, LFP, LIP and SURE combined.
- For 2009 through 2011, no person or legal entity (excluding a joint venture or general partnership), as defined and determined by the regulations in 7 CFR part 1400 may receive, directly or indirectly, more than $100,000 total per crop year under ELAP, LFP, LIP and SURE combined.

For the payment limits, both indirect and direct benefits are counted by attribution such that the total amount of payments is attributed to a person by taking into account the direct and indirect ownership interests of the person in a legal entity that is eligible to receive payments. In the case of a legal entity, the same payment is attributed to the direct payee in the full amount and those that have an indirect interest to the amount of that indirect interest. For example, under the attribution rules that apply to these programs, assume:

- Corporation A is in line to receive a $100,000 SURE payment,
- Corporation A is owned 50 percent by Individual A and 50 percent by Corporation B, and
- Corporation B is owned by Individual B with a 30 percent interest and by Individual C with a 70 percent interest.

If so, Corporation A, for payment limitation purposes would be considered to have received $100,000 and Individual C (who owns 70 percent of Corporation B, which owns 50 percent of Corporation A) would be considered to have indirectly benefitted by the amount of $35,000 (50 percent times 70 percent of the $100,000). Even though no part of the $100,000 was actually paid to Individual C, the $35,000 would count against Individual C's overall payment limitation from all sources and farms. Assume now that Individual C was already at the maximum payment limit. If so, Individual C would not have been eligible to receive $35,000; as a result, the payment to Corporation A would be reduced by $35,000.

The amount of any payment for which a participant may be eligible from the SURE program will be commensurately reduced by any amount received by the participant for the same or any similar loss from any Federal disaster assistance program. Such disaster programs include USDA conservation programs that pay for replanting or replacing plants damaged by disaster. Aquaculture producers who received assistance under the Aquaculture Grant Program [3] will not be eligible for SURE assistance on those species of aquaculture for which a grant payment was received. Indemnities or NAP payments issued for losses of the species will, however, count on the revenue side of the SURE payment calculation. Participants cannot receive SURE assistance for the same loss under ELAP, LIP, LFP or TAP.

Provisions for both pay limits and for limits related to an individual's or entity's adjusted gross income were contained in the administrative subparts of part 760 (discussed above, previously

[1] Value loss crops ineligible for quality losses include aquaculture, floriculture, mushrooms, ginseng root, ornamental nursery, Christmas trees, and turfgrass sod.

[2] Specialty crops ineligible for quality losses include honey and maple sap.

[3] The Aquaculture Grant Program was authorized by the Recovery Act and implemented through a notice of Funds Availability published in the **Federal Register** on June 2, 2009 (74 FR 26363–26365).

issued to implement other Farm Bill disaster assistance programs) and generally the administration of those limitations will follow general regulations in 7 CFR part 1400. In applying the limitation on average adjusted gross income (AGI) for 2008, an individual or entity is ineligible for SURE payment if the individual's or entity's average annual AGI for 2005, 2006, and 2007 exceeded $2.5 million, under the provisions in 7 CFR part 1400 in effect for 2008. For 2009 through 2011, the average AGI limitation provisions in 7 CFR part 1400 applicable to CCC commodity programs also apply to SURE. As specified in the 2008 Farm Bill, for 2009 through 2011, a person or legal entity with an average adjusted gross nonfarm income, as defined in 7 CFR 1400.3, that exceeds $500,000 for the relevant period, which is the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC, will not be eligible to receive payments under these programs. Likewise, if a person with an indirect interest in a legal entity has an average nonfarm AGI over $500,000, then the payment to the legal entity will be commensurately reduced as calculated based on the percent of interest in the legal entity receiving the payment. For example, continuing with the assumptions in the example above, if Individual B had an average AGI that was over the limit, then the payment to Corporation A will be reduced by 15 percent (Individual B's 30 percent interest in Corporation B times Corporation B's 50 percent interest in Corporation A).

Payment and average AGI limits will be determined under regulations specified in 7 CFR part 1400 for CCC commodity programs. The SURE program is not a CCC program, but the CCC regulations in 7 CFR part 1400 are adopted for this program.

The relevant AGI period for SURE and the other disaster assistance programs for 2008 is the 3 calendar years that precede the program year involved which are 2005, 2006 and 2007. However, beginning with 2009, the AGI period is the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. For SURE, the program year is the year that corresponds to the relevant crop year. This program will be administered by crop year and most times the crop year for all crops is easily indentified because both the year of the planting and the year of the harvesting are the same or at least the calendar year of the harvesting is the same nationwide. The Deputy Administrator will be the ultimate arbiter of which production fits in which ''crop year'' for purposes of SURE calculations. The crop year concept in some limited cases can involve a loss that occurs in a different calendar year than the calendar year whose number corresponds to the crop year. For example, wheat for the 2009 crop year can be planted in the fall of 2008 and be damaged or lost during 2008. SURE payments related to such a loss would be made for the 2009 crop year wheat, because the intent was to harvest this wheat in 2009.

Production losses are, in general, determined by calendar year of harvest, but the payment limitation is for a crop year. Also, the national average market price (NAMP) for a marketing year may not be available until the fall of the following crop year, so the SURE payment may often be calculated and paid in a different (later) calendar year than the actual year of loss or losses.

The regulations in 7 CFR 1400.105 specify how payments will be attributed and how far the attribution will go. Attribution will be tracked through four levels of ownership in legal entities. The 2008 Farm Bill removed the previous ''3 entity rule,'' so a person can now receive benefits attributed through an unlimited number of entities, subject to the payment limits and the rules of attribution described in this final rule and in 7 CFR part 1400.

In addition, the 2008 Farm Bill imposes limitations of payments to foreign persons. Those limits are specified in the regulations in § 760.103.

Payment Calculation—Overview

The SURE guarantee cannot exceed 90 percent of the total expected revenue for the crops on the farm. Depending on the level of insurance coverage the participant elects, the SURE guarantee for a specific participant may be less than 90 percent of the expected revenue. In general, the higher the level of insurance coverage purchased, the higher the SURE guarantee. A participant who purchases the minimum insurance required by this part and meets all other eligibility requirements will be eligible for SURE, but the SURE guarantee will reflect that minimal level of coverage.

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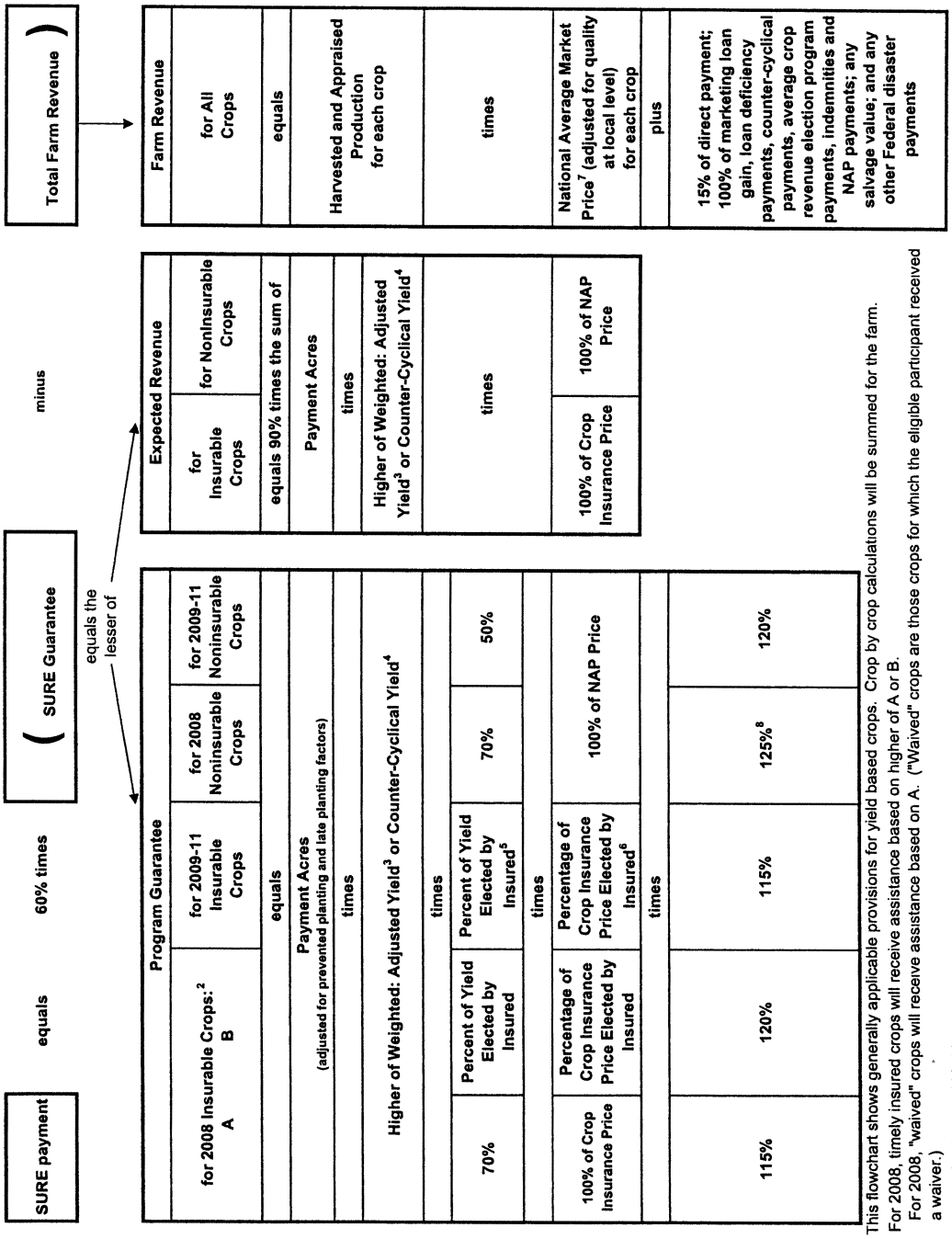
Table 1. SURE Flowchart for 2008 through 2011 Crops.[1]



[1] This flowchart shows generally applicable provisions for yield based crops. Crop by crop calculations will be summed for the farm.

[2] For 2008, timely insured crops will receive assistance based on higher of A or B.
For 2008, "waived" crops will receive assistance based on A. ("Waived" crops are those crops for which the eligible participant received a waiver.)

[3] Formula for Adjusted Yield.
If producer has at least 4 years of non-plug yields, then average all non-plug yields (replacement yields).
Less than 4 years of non-plug yields, then average all yields after dropping lowest plug yield.

[4] 65% of county or counter-cyclical yield for "waived" crops.

[5] 50% for "waived" crops.

[6] 55% for "waived" crops.

[7] Not to exceed 100% of NAP price for noninsurable crops.

[8] The percent was revised per the Recovery Act.

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The following is an example of how a SURE payment is calculated for a participant with two crops; corn insured with FCIC crop insurance and alfalfa with NAP coverage. After the example, the general SURE payment calculation formula is discussed.

SURE Guarantee Calculation Example for 2009 Through 2011 Crop Years

The SURE program guarantee calculation for insured corn in this example is as follows: Assume 100 payment acres times an assumed 100 bushels per acre (SURE yield) times $4.00 per bushel (price election) times 70 percent (coverage level) times 115 percent (SURE multiplier) equals $32,200.

The program guarantee calculation for alfalfa with NAP coverage in this example is as follows: assume 100 payment acres times an assumed 4.0 tons per acre (SURE yield) times an assumed $70 per ton (NAP established price) times 50 percent times 120 percent (SURE multiplier) equals $16,800.

The SURE guarantee is: $32,200 (corn) plus $16,800 (alfalfa) equals $49,000.

The SURE guarantee is limited to 90 percent of the sum of the expected revenue for each crop on the farm. Expected revenue for corn is: 100 payment acres times 100 bushels per acre (SURE yield) times $4.00 (price) equals $40,000. For alfalfa: 100 payment acres times 4.0 tons per acre (SURE yield) times $70 (NAP established price) equals $28,000.

The expected revenue is: $40,000 (corn) plus $28,000 (alfalfa) equals $68,000.

Total expected revenue $68,000 times 90 percent equals $61,200 (SURE guarantee cap).

Total Farm Revenue Calculation Example for 2008 Through 2011 Crop Years

Revenue for the insured corn in this example is based on a 60 percent loss in production that the participant experienced for this crop, which in the example resulted in a 40 bushel yield. For the purpose of the example, NAMP for insured corn in the State is $4.00 per bushel. Assume, too, a freeze also affected this corn, which resulted in a quality adjustment of 90 percent to account for extra moisture, which is applied to the price. Therefore, the estimated actual value for this crop is $4.00 (NAMP) times 90 percent (quality adjustment) equals $3.60 times 4,000 bushels (actual production of the payment acres) equals $14,400.

Revenue for the alfalfa in this example is based on a 25 percent loss in production that the participant experienced for this crop, which resulted in a 3 ton yield. For the purpose of the example, NAMP for alfalfa in the State is $70. There is no quality adjustment for the alfalfa crop. Therefore, estimated actual value for the alfalfa crop is $70 (NAMP capped at 100 percent of the NAP established price) × 300 tons (actual production of the payment acres) equals $21,000.

Total farm revenue for this participant is $14,400 (corn) + $21,000 (alfalfa) equals $35,400.

The SURE payment for this participant would be: $49,000 (SURE guarantee) − $35,400 (total farm revenue) = $13,600 times 60 percent equals $8,160.

SURE Payment Example for 2008 Through 2011 Crop Years

The SURE payment will be calculated based on the difference between a program guarantee and farm revenue as determined for a participant's farm. The SURE program guarantee for a specific participant is based on the participant's risk management purchases. The SURE calculation of revenue is based on an applicant's actual production and NAMP for the commodities produced, as well as a number of other revenue sources such as farm program or NAP payments and insurance indemnities. In general, because SURE is intended to enhance or augment risk management purchases, participants who elect higher amounts of coverage will see greater SURE benefits, compared to those who elect lesser amounts of coverage. Under SURE, the crop insurance indemnity that is counted in the SURE revenue calculation is after subtracting producer-paid premiums for crop insurance in an amount not to exceed the crop insurance indemnity paymenton a per unit basis.

The SURE payment is 60 percent of the difference between the SURE guarantee and the total farm revenue. If total farm revenue is below the SURE guarantee, the participant will be eligible for a payment based on the amount of the shortfall. In general, except for additional 2008 assistance made available by the Recovery Act, the SURE guarantee for insurable crops is determined by multiplying:

- The number of planted and prevented planted acres, times
- The higher of either the adjusted actual production history yield or counter-cyclical yield, times
- The coverage level, times
- The price determined by the percentage of the crop insurance price elected by the participant, times
- 115 percent (1.15).

In general, except for additional 2008 assistance made available by the Recovery Act, the SURE guarantee for noninsurable crops is determined by multiplying:

- The number of planted and prevented planted acres, times
- the higher of either the actual production history yield or the counter-cyclical yield, times
- 50 percent (yield coverage under NAP), times
- the NAP price, times
- 120 percent (1.20).

This rule specifies how the basic formula will be adjusted to address a number of specific situations. Those situations include, but are not limited to, adjustments for situations such as:

- If a participant was exempt from the risk management purchase requirement, the participant's SURE yield will be determined by the FSA county committee using 65 percent of the higher of the counter-cyclical program yield or the FCIC or county expected yield for the crop as established by the Deputy Administrator.
- If a participant's policy or plan of insurance provides for an adjustment in the liability, such as in the case of prevented or late planting, that adjustment will be used in calculating the SURE guarantee.
- If a participant's NAP coverage provides for an adjustment in the level of assistance, such as for unharvested crops or prevented or late planting, that adjustment will be used in calculating the SURE guarantee.
- If the farm is in an approved multiple cropping or double-cropping area and both crops suffer losses, both crops may be eligible for the calculation of disaster assistance if appropriate documentation is provided. In most cases, only the first or initial crop is eligible and will be used in calculating the SURE guarantee and revenue.
- For 2008 only, and only under certain situations where the producer met certain requirements, the Recovery Act provides for changes to the percentages used to calculate the guarantee, such that the multiplier is changed from 115 percent to 120 percent and from 120 percent to 125 percent, respectively. These percentages are used in the comparison calculation to determine the amount of the SURE payment; the Recovery Act specifies the two calculations for the comparison and requires that the greater amount be used. Using the NAP calculation with the 125 percent will never result in being the greater amount; therefore, the calculation in the regulation uses the other calculation in the comparison, which uses 120 percent.

Socially disadvantaged producers, limited resource producers, and beginning farmers and ranchers who did not purchase risk management coverage will be eligible for the same level of assistance as participants who satisfied the purchase requirement by obtaining the minimum level of coverage available, which is generally catastrophic or ''CAT'' coverage for insured crops or the standard NAP level of coverage for noninsured crops. Equitable consideration will be provided for instances involving non-yield based crop insurance policies. For RMA ''pilot'' insured crops, having either pilot or NAP coverage on applicable crops would meet the risk management purchase requirement. The payment formulas in this rule are intended to treat similarly situated participants consistently and equitably. However, participants having similar losses on the same or similar crops may not necessarily receive the same payment.

National Average Market Price (NAMP)

The Deputy Administrator will determine NAMP for each crop in a marketing year, taking into account the best information available that the Deputy Administrator believes is relevant to such decision. The 2008 Farm Bill specifies that the Secretary will adjust NAMP to reflect average quality discounts applied to the local or regional market price of a crop. Adjustments will be made at the State and county levels to account for crop value that is affected by quality or is reduced due to excessive high moisture content resulting from a disaster-related

condition. Quality adjustments will require participants to provide verifiable evidence of production that details the extent of the quality loss for a specific quantity. Test evidence to support the need for quality adjustments, in addition to meeting all the requirements of § 760.641, must have been completed by January 1 of the year following harvest.

For a crop for which an eligible participant on a farm receives assistance under NAP, NAMP will be not more than the price of the crop established under NAP. As determined by the Deputy Administrator, NAMP will be derived using data from the National Agricultural Statistics Service and other sources, and will consist of only one nationwide NAMP for the crop. NAMP may be adjusted, as determined by the Deputy Administrator, to reflect regional variations in a manner consistent with FCIA or NAP. NAMPs may be adjusted by FSA State committees, in accordance with procedures set out by the Deputy Administrator to recognize average quality loss factors that are reflected in market by region. In general, adjustments will be made at the State level for counties or portions of counties. The NAMP will be established on a harvested basis, not including costs of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by FSA.

In all cases, matters such as NAMPs and other program provisions that apply generally, which are not established or determined in response to individual participant applications, are not and will not be individually appealable or contestable. Participants have the right to challenge administrative decisions made in response to their particular applications; however, they cannot appeal general program provisions such as average prices, average yields, NAMPs, or factors used for similarly situated participants, as specified in 7 CFR 760.110.

Treatment of Value Loss Crops

Production methods and risk management of value loss crops, such as ornamental nursery and aquaculture, are significantly different than for yield-based crops. Where a yield-based crop is harvested and marketed in a single crop year or marketing year, the participant's inventory of the typical value loss crop fluctuates, sometimes rapidly, in the course of normal business operations. The total value of the inventory fluctuates for reasons that may be unrelated to a disaster or to a farm's expected annual revenue or production.

SURE payment eligibility for value loss crops will be determined based on inventory and losses at the time of the disaster and only for the losses due to that disaster. This is in contrast to other types of crops, where the SURE guarantee will typically be based on several years of production history. The guarantee for value loss crops will be based on the inventory on hand immediately before the disaster and the revenue used for the payment calculation will be based on the inventory immediately after the disaster. Daily inventory records required for NAP or crop insurance will typically be sufficient for documenting losses for SURE payment eligibility. All other inventory not marketed immediately prior to and after the disaster event are not relevant for SURE purposes and will not be counted as part of the guarantee or as farm revenue. Further, farm revenue will not be adjusted for market price declines due to the complexity in determining average market prices by species for value loss crops. Quality will also not be further considered in determining revenue. These provisions are consistent with insurance policies and NAP for value loss crops.

For value loss crops, the SURE guarantee will be based on the level of insurance coverage selected, as with other crops. For example, if a participant had $100,000 value of value loss crop inventory immediately before the disaster or event and had elected an insurance coverage level of 70 percent, the SURE payment would be calculated on 60 percent of the difference between the dollar value of inventory immediately after disaster ($0 in this example for a total loss) and the SURE guarantee of $80,500 ($100,000 times 70 percent coverage level times 115 percent). If the participant was already paid $70,000 in crop insurance indemnity over the cost of the producer-paid premiums for the farm, as specified in this rule (which counts as revenue), then SURE would pay 60 percent of the difference between the SURE guarantee for the participant ($80,500) and the $70,000 indemnity. In this case, 60 percent of $10,500 equals $6,300.

Application and Certification of Interests Deadline

There is no pre-sign-up or pre-enrollment required for SURE, but participants must submit a complete application in order to be eligible to receive payment. The application for payment will serve as the participant's certification of eligibility and interests. FSA will use these certifications to determine payment eligibility. Participants must submit an application by March 1 of the calendar year two years after the crop year of the loss. For example, for the 2009 crop year, the SURE application including certification of interests must be submitted to the FSA county office by March 1, 2011.

Lack of Access

The 2008 Farm Bill, as amended by the Recovery Act, contains a lack of access provision that authorizes discretion to the Secretary to provide assistance to participants who suffered a 2008 production loss due to a natural cause, except as specified in the Recovery Act. Under that provision, assistance may be provided to producers that did not have access to a policy or plan of insurance or did not qualify for a written agreement because one or more farming practices, which the Secretary has determined are good farming practices, differ significantly from practices of producers of the same crop in other regions of the United States, and were not eligible for NAP coverage. The Deputy Administrator has the authority to exercise this discretion as needed, but it is understood that the scope of this provision is very limited. Whether the Deputy Administrator exercises this authority or not is not a relief determination for an individual program participant based on particular facts but a discretionary determination of general effect. Accordingly, it is FSA's position that such determinations are not subject to administrative appeal either within FSA or before the National Appeal Division of the Department.

Multi-Year Losses

The 2008 Farm Bill, as amended by the Recovery Act, authorized the Secretary to provide equitable treatment as the Secretary considers appropriate for eligible participants on a farm that suffered production losses in the 2008 crop year that result in multi-year production losses. In order to be consistent with policies or plans of risk management coverage available to the majority of crops that are likely to be included in the SURE farm, and due to the complexity and potential problems of calculating multi-year losses on both the farm guarantee and revenue sides, as well as the difficulty in determining whether events in any one crop year were significant enough to result in multi-year losses, the Secretary has elected not to implement any discretionary provisions for multi-year losses under SURE at this time.

Notice and Comment

The 2008 Consolidated Security, Disaster Assistance, and Continuing

Appropriations Act (Pub. L. 110–329) made section 1601(c)(2) of the 2008 Farm Bill applicable in implementing section 12033 of the 2008 Farm Bill. To the extent relevant, the exemptions granted by section 1601(c)(2) of the 2008 Farm Bill apply, we believe, to the corresponding provision enacted in section 15101 since they are identical except for the provisions for funding in section 15101, which do not appear at all in section 12033. Otherwise, the provisions of Public Law 110–329 would have no meaning. Therefore, these regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c)(2) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866 and, therefore, OMB reviewed this final rule. A cost-benefit assessment of this rule is summarized below and is available from the contact information above.

Summary of Economic Impacts

SURE payments for 2008 through 2011 are expected to total $3.4 billion, an average of $0.85 billion per crop year, which represents both the cost of the program and the benefit to participants. This is less than the average of $1.14 billion per year for previous ad hoc crop disaster programs from 1998 to 2007. This estimate for SURE was estimated by taking the cost of ad hoc crop disaster programs from 1998 to 2007 and adjusting that cost for predicted cash value of crop production for 2008 through 2011 and for the specific eligibility requirements for SURE.

Although crop prices are expected to continue rising, potentially resulting in greater costs for SURE than for previous programs, the overall costs for SURE are expected to be less than to the cost of previous ad hoc disaster programs because, unlike ad hoc disaster programs, SURE, in general, is additional compensation for established losses under crop insurance or NAP. SURE is not a benefit that replaces or duplicates previously received crop insurance or NAP payments, although the crop insurance indemnity that is counted in the SURE revenue calculation is after subtracting producer-paid premiums for crop insurance in an amount not to exceed the crop insurance indemnity payment. This provision has been included in the rule because the 2008 Farm Bill exempts program indemnities from the calculation of the farm's revenue for purposes of comparing that revenue with the program guarantee. Often, the premium is simply deducted from the indemnity rather than paid outright and it is FSA's view that the 2008 Farm Bill contemplated the ''indemnity'' to mean the net revenue paid to the farmer as that would reflect the actual positive effect of that recovery on revenue. This does not suggest in any way that premiums that do not result in a indemnity payment or other farm costs should be deducted, but rather is an accommodation of what it believed to be the perceived intent of this specific provision in the 2008 Farm Bill addressing indemnities.

Also, SURE payments are based on farm revenue losses, rather than losses in particular crops or individual units, so participants with losses in one crop but not others may or may not qualify for a SURE payment.

The SURE guarantee cap is 90 percent of expected revenue, while previous programs had a cap of 95 percent of normal crop value.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since FSA is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). FSA has determined that the combination of discretionary and non-discretionary provisions of this Rule would not constitute a major Federal action that would significantly affect the quality of the human environment, and therefore, no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with States was not required.

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. In addition, FSA was not required to publish a notice of proposed rule making for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule has been determined to be Major under SBREFA (Pub. L. 104–121). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the disasters addressed by this rule. Therefore, this rule is effective immediately.

Federal Assistance Programs

This rule applies to the following Federal assistance program that is not listed in the Catalog of Federal Domestic Assistance: 10.090–SURE.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

■ For the reasons discussed above, the Farm Service Agency, USDA, amends 7 CFR part 760 as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. The authority citation for part 760 continues to read as follows:

Authority: 7 U.S.C. 4501, 7 U.S.C. 1531, 16 U.S.C. 3801, note, and 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; and Title IX, Pub. L. 110–28, 121 Stat. 211.

■ 2. Add subpart G to read as follows:

Subpart G—Supplemental Revenue Assistance Payments Program

Sec.

760.601 Applicability.
760.602 Definitions.
760.610 Participant eligibility.
760.611 Qualifying losses, eligible causes and types of loss.
760.613 De minimis exception.
760.614 Lack of access.
760.620 Time and method of application and certification of interests.
760.621 Requirement to report acreage and production.
760.622 Incorrect or false producer certification evidence.
760.631 SURE guarantee calculation.
760.632 Payment acres.
760.633 2008 SURE guarantee calculation.
760.634 SURE guarantee for value loss crops.
760.635 Total farm revenue.
760.636 Expected revenue.
760.637 Determination of production.
760.638 Determination of SURE yield.
760.640 National average market price.
760.641 Adjustments made to NAMP to reflect loss of quality.
760.650 Calculating SURE.

Subpart G—Supplemental Revenue Assistance Payments Program

§ 760.601 Applicability.

(a) This subpart specifies the terms and conditions of the Supplemental Revenue Assistance Payments Program (SURE).

(b) Assistance in the form of SURE payments is available for crop losses occurring in the crop year 2008 through September 30, 2011, caused by disaster as determined by the Secretary.

(c) SURE provides disaster assistance to eligible participants on farms in:

(1) Disaster counties designated by the Secretary, which also includes counties contiguous to such declared disaster counties, if the participant incurred actual production losses of at least 10 percent to at least one crop of economic significance on the farm; and

(2) Any county, if the participant incurred eligible total crop losses of greater than or equal to 50 percent of the normal production on the farm, as measured by revenue, including a loss of at least 10 percent to at least one crop of economic significance on the farm.

(d) Subject to the provisions in subpart B of this part, SURE payments will be issued on 60 percent of the difference between the SURE guarantee and total farm revenue, calculated using the National Average Market Price as specified in this subpart.

§ 760.602 Definitions.

(a) The following definitions apply to all determinations made under this subpart.

(b) The terms defined in parts 718, 1400, and 1437 of this title and subpart B of this part will be applicable, except where those definitions conflict with the definitions set forth in this section In the event that a definition in any of those parts conflicts with the definitions set forth in this subpart, the definitions in this subpart apply. Any additional conflicts will be resolved by the Deputy Administrator.

Actual crop acreage means all acreage for each crop planted or intended to be planted on the farm.

Actual production history yield means the average of the actual production history yields for each insurable or noninsurable crop as calculated under the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1501–1524) or Noninsured Crop Disaster Assistance Program (NAP) as set forth in part 1437 of this title, respectively. FSA will use the actual production history yield data provided for crop insurance or NAP, if available, in the SURE payment calculation.

Actual production on the farm means, unless the Deputy Administrator determines that the context requires otherwise, the sum obtained by adding:

(1) For each insurable crop on the farm, excluding value loss crops, the product obtained by multiplying:

(i) 100 percent of the per unit price for the crop used to calculate a crop insurance indemnity for the applicable crop insurance if a crop insurance indemnity is triggered. If a price is not available, then the price is 100 percent of the NAP established price for the crop, times

(ii) The relevant per unit quantity of the crop produced on the farm, adjusted for quality losses, plus

(2) For each noninsurable crop on the farm, excluding value loss crops, the product obtained by multiplying:

(i) 100 percent of the per unit NAP established price for the crop, times

(ii) The relevant per unit quantity of the crop produced on the farm, adjusted for quality losses, plus

(3) For value loss crops, the value of inventory immediately after the disaster.

Adjusted actual production history yield means a yield that will not be less than the participant's actual production history yield for a year and:

(1) In the case of an eligible participant on a farm that has at least 4 years of actual production history for an insurable crop that are established other than pursuant to section 508(g)(4)(B) of FCIA, the average of the production history for the eligible participant without regard to any yields established under that section;

(2) In the case of an eligible participant on a farm that has less than 4 years of actual production history for an insurable crop, of which one or more were established pursuant to section 508(g)(4)(B) of FCIA, the average of the production history for the eligible participant as calculated without including the lowest of the yields established pursuant to section 508(g)(4)(B) of FCIA; or

(3) In all other cases, the actual production history yield of the eligible participant on a farm.

Adjusted NAP yield means a yield that will not be less than the participant's actual production history yield for NAP for a year and:

(1) In the case of an eligible participant on a farm that has at least 4 years of actual production history under NAP that are not replacement yields, the average of the production history without regard to any replacement yields;

(2) In the case of an eligible participant on a farm that has less than 4 years of actual production history under NAP that are not replacement yields, the average of the production history without including the lowest of replacement yields; or

(3) In all other cases, the actual production history yield of the eligible participant on the farm under NAP.

Administrative fee means a fixed fee payable by a participant for NAP or crop insurance coverage, including buy-in fees, based on the number of covered crops under NAP or insurance under FCIA.

Appraised production means production determined by FSA, or an insurance provider approved by FCIC, that was unharvested, but which was determined to reflect the crop's yield potential at the time of appraisal. An appraisal may be provided in terms of a potential value of the crop.

Aquaculture means the reproduction and rearing of aquatic species as specified in part 1437 of this title in controlled or selected environments.

Brownout means a disruption of electrical or other similar power source for any reason. A brownout, although it may indirectly have an adverse effect on crops, is not a disaster for the purposes of this subpart and losses caused by a brownout will not be considered a qualifying loss.

Catastrophic risk protection (CAT) means the minimum level of coverage offered by the Risk Management Agency (RMA) for crop insurance. CAT is further specified in parts 402 and 1437 of this title.

Counter-cyclical program payment yield means the weighted average payment yield established under part 1412, subpart C of this title.

County expected yield means an estimated yield, expressed in a specific unit of measure equal to the average of the most recent five years of official county yields established by FSA, excluding the years with the highest and lowest yields, respectively.

Crop insurance indemnity means, for the purpose of this subpart, the net payment to a participant excluding the value of the premium for crop losses covered under crop insurance administered in accordance with FCIA by RMA.

Crop of economic significance means any crop, as defined in this subpart that contributed, or, if the crop is not successfully produced, would have contributed or is expected to contribute, 5 percent or more of the total expected revenue from all of a participant's crops on a farm.

Crop year means as determined by the Deputy Administrator for a commodity on a nationwide basis the calendar year in which the crop is normally harvested or, where more than one calendar year is involved, the calendar year in which the majority of the crop would have been harvested. For crops on which catastrophic risk protection, as defined in this section, is available, the crop year will be as defined as in such coverage. Crop year determinations by the Deputy Administrator will be final in all cases and, because these are matters of general applicability, will not considered by the Farm Service Agency to be subject to administrative appeal.

Determined acreage or determined production means the amount of acres or production for a farm established by a representative of FSA by use of appropriate means such as official acreage, digitizing and planimetering areas on the photograph or other photographic image, or computations from scaled dimensions or ground measurements. In the case of production, any production established by a representative of FSA through audit, review, measurement, appraisal, or other acceptable means of determining production, as determined by FSA.

Disaster means damaging weather, including drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat, weather-related saltwater intrusion, weather-related irrigation water rationing, or any combination thereof and adverse natural occurrences such as earthquakes or volcanic eruptions. Disaster includes a related condition that occurs as a result of the damaging weather or adverse natural occurrence and exacerbates the condition of the crop, such as disease and insect infestation. It does not include brownouts or power failures.

Disaster county means a county included in the geographic area covered by a qualifying natural disaster designation under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)) and for SURE, the term ''disaster county'' also includes a county contiguous to a county declared a disaster by the Secretary; however, farms not in a disaster county may qualify under SURE where for the relevant period, as determined under this subpart, the actual production on a farm is less than 50 percent of the normal production on the farm.

Double-cropping means, as determined by the Deputy Administrator on a regional basis, planting for harvest a crop of a different commodity on the same acres in cycle with another crop in a 12-month period in an area where such double-cropping is considered normal, or could be considered to be normal, for all growers and under normal growing conditions and normal agricultural practices for the region and being able to repeat the same cycle in the following 12-month period.

Farm means, for the purposes of determining SURE eligibility, the entirety of all crop acreage in all counties that a producer planted or intended to be planted for harvest for normal commercial sale or on-farm livestock feeding, including native and improved grassland intended for haying. In the case of aquaculture, except for species for which an Aquaculture Grant Program payment was received, the term ''farm'' includes all acreage used for all aquatic species being produced in all counties that the producer intended to harvest for normal commercial sale. In the case of honey, the term ''farm'' means all bees and beehives in all counties that the participant intended to be harvested for a honey crop for normal commercial sale.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation operated and managed by USDA RMA.

FSA means the Farm Service Agency.

Harvested means:

(1) For insurable crops, harvested is as defined according to the applicable crop insurance policy administered in accordance with FCIA by RMA;

(2) For NAP-covered single harvest crops, a mature crop that has been removed from the field, either by hand or mechanically;

(3) For noninsurable crops with potential multiple harvests in one year or one crop harvested over multiple years, that the participant has, by hand or mechanically, removed at least one mature crop from the field during the crop year; or

(4) For mechanically harvested noninsurable crops, that the mature crop has been removed from the field and placed in or on a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazing of land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor.

Initial crop means a first crop planted for which assistance is provided under this subpart.

Insurable crop means an agricultural commodity (excluding livestock) for which the participant on a farm is eligible to obtain a policy or plan of crop insurance administered in

accordance with FCIA by RMA. Such a crop for which the participant purchased insurance from RMA is referred to as an insured crop.

Insurance is available means when crop information is contained in RMA's county actuarial documents for a particular crop and a policy or plan of insurance administered in accordance with FCIA by RMA. If the Adjusted Gross Revenue Plan of crop insurance was the only plan of insurance available for the crop in the county in the applicable crop year, insurance is considered not available for that crop. If an AGR plan or a pilot plan was the only plan available, producers are not required to purchase it to meet the risk management purchase requirement, but it will satisfy the risk management purchase requirement. In that case, the other ways to meet the requirement would be, if all the requirements of this subpart are met, a buy-in or NAP.

Intended use means the original use for which a crop or a commodity is grown and produced.

Marketing year means the 12 months immediately following the established final harvest date of the crop of a commodity, as determined by the Deputy Administrator, and not an individual participant's final harvest date. FSA will use the marketing year determined by NASS, when available.

Maximum average loss level means the maximum level of crop loss that will be used in calculating SURE payments for a participant without reliable or verifiable production records as defined in this section. Loss levels are expressed in either a percent of loss or a yield per acre, and reflect the amount of production that a participant should have produced considering the eligible disaster conditions in the area or county, as determined by the FSA county committee in accordance with instructions issued by the Deputy Administrator.

Multi-use crop means a crop intended for more than one use during the calendar year such as grass harvested for seed, hay, or grazing.

Multiple planting means the planting for harvest of the same crop in more than one planting period in a crop year on the same or different acreage. This is also sometimes referred in this rule as multiple cropping.

NAMP means the national average market price determined in accordance with §§ 760.640 and 760.641.

NASS is the USDA National Agricultural Statistics Service.

Noninsurable crop means a commercially produced crop for which the eligible participants on a farm may obtain coverage under NAP.

Noninsured Crop Disaster Assistance Program or NAP means the FSA program carried out under 7 U.S.C. 7333, as specified in part 1437 of this title.

Normal production on the farm means, for purposes of the revenue calculations of this subpart, the sum of the expected revenue for all crops on the farm. It is stated in terms of revenue, because different crops may have different units of measure.

Planted acreage means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seed bed that has been properly prepared for the planting method and production practice normal to the area, as determined by the FSA county committee.

Prevented planting means the inability to plant an eligible crop with proper equipment during the planting period as a result of a disaster, as determined by FSA. All prevented planted cropland must meet conditions provided in § 718.103 of this chapter. Additionally, all insured crops must satisfy the provisions of prevented planting provided in § 457.8 of this title.

Price election means, for an insured crop, the crop insurance price elected by the participant multiplied by the percentage of price elected by the participant.

Production means quantity of a crop or commodity produced on the farm expressed in a specific unit of measure including, but not limited to, bushels or pounds and used to determine the normal production on a farm. Normal production for the whole farm is stated in terms of revenue, because different crops may have different units of measure.

Qualifying loss means a 10 percent loss of at least one crop of economic significance due to disaster and on a farm that is either:

(1) Located in a disaster county (a county for which a Secretarial disaster designation has been issued or in a county contiguous to a county that has received a Secretarial disaster designation), or

(2) If not located in any disaster county or county contiguous to such a county, but has an overall loss greater than or equal to 50 percent of normal production on the farm (expected revenue for all crops on the farm) due to disaster.

Qualifying natural disaster designation means a natural disaster designated by the Secretary for production losses under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)).

Related condition means, with respect to a disaster, a condition that causes deterioration of a crop such as insect infestation, plant disease, or aflatoxin that is accelerated or exacerbated as a result of damaging weather, as determined by the Deputy Administrator.

Reliable production records means evidence provided by the participant to the FSA county office that FSA determines is adequate to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries. When the term ''acceptable production records'' is used in this rule, it may be either reliable or verifiable production records, as defined in this section.

Reported acreage or production means information obtained from the participant or the participant's agent, on a form prescribed by FSA or through insurance records.

RMA means the Risk Management Agency.

Salvage value means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

Secretary means the Secretary of Agriculture.

State means a State; the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Subsequent crop means any crop planted after an initial crop, on the same land, during the same crop year.

SURE means the Supplemental Revenue Assistance Payments Program.

Unit of measure means:

(1) For all insurable crops, the FCIC established unit of measure;

(2) For all noninsurable crops, if available, the established unit of measure used for the NAP price and yield;

(3) For aquatic species, a standard unit of measure such as gallons, pounds, inches or pieces, established by the FSA State committee for all aquatic species or varieties;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon; and

(6) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy, as determined by the FSA State committee.

USDA means United States Department of Agriculture.

Value loss crop has the meaning specified in part 1437, subpart D of this

title. Unless otherwise announced by FSA, value loss crops for SURE include aquaculture, floriculture, ornamental nursery, Christmas trees, mushrooms, ginseng, and turfgrass sod.

Verifiable production records mean evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source.

Volunteer stand means plants that grow from seed residue or are indigenous or are not planted. Volunteer plants may sprout from seeds left behind during a harvest of a previous crop; be unintentionally introduced to land by wind, birds, or fish; or be inadvertently mixed into a crop's growing medium.

§ 760.610 Participant eligibility.

(a) In addition to meeting the eligibility requirements of § 760.103, a participant must meet all of the following conditions:

(1) All insurable crops on the participant's farm must be covered by crop insurance administered by RMA in accordance with FCIA, and all noninsured crops must be covered under NAP, as specified in § 760.104, unless the participant meets the requirements in either § 760.105 or § 760.107. At the discretion of FSA, the equitable relief provisions in § 760.106 may apply.

(2) Crop losses must have occurred in crop year 2008 and subsequent crop years through September 30, 2011, as a result of disaster as defined in § 760.602, and must have occurred in the particular crop year for which benefits are sought under this subpart.

(3) A qualifying loss as defined in § 760.602 must have occurred.

(4) The participant must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title, for 2008 and subsequent crop years through September 30, 2011, as applicable, and must not otherwise be barred from receiving benefits or payments under part 12 of this title or any other law.

(5) The participant must not be ineligible or otherwise barred from the requisite risk management insurance programs or NAP because of past violations where those insurance programs or NAP would otherwise be available absent such violations.

(6) The participant must have an entitlement to an ownership share of the crop and also assume production and market risks associated with the production of the crop. In the event the crop was planted but not produced, participants must have an ownership share of the crop that would have been produced.

(i) Any verbal or written contract that precludes the grower from having an ownership share renders the grower ineligible for payments under this subpart.

(ii) Growers growing eligible crops under contract are not eligible participants under this subpart unless the grower has an ownership share of the crop.

(b) In the event that a producer is determined not to be an eligible producer of a crop in accordance with this section, such crop will be disregarded in determining the producer's production or eligibility for payments under this subpart. However, any insurance, farm program, or NAP payments received by the producer on such crop will count as farm revenue if that producer is an eligible participant as a producer of other crops.

(c) Participants may not receive payments with respect to volunteer stands of crops. Volunteer stands will not be considered in either the calculation of revenue or of the SURE guarantee.

(d) A deceased applicant or an applicant that is a dissolved entity that suffered losses prior to the death or the dissolution that met all eligibility criteria prior to death or dissolution may be eligible for payments for such losses if an authorized representative signs the application for payment. Proof of authority to sign for the deceased participant or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment. Eligibility of such participant will be determined, as it is for other participants, based upon ownership share and risk in producing the crop.

(e) Participants receiving payments under the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish Program (ELAP) as specified in subpart C of this part are not eligible to receive payments under SURE for the same loss.

(f) Participants with a farming interest in multiple counties who apply for SURE payment based on a Secretarial disaster designation must have a 10 percent loss of a crop of economic significance located in at least one disaster county, as defined in this subpart, to be eligible for SURE.

§ 760.611 Qualifying losses, eligible causes and types of loss.

(a) Eligible causes of loss are disasters which cause types of losses where the crop could not be planted or where crop production was adversely affected in quantity, quality, or both. A qualifying loss, as defined in this subpart, must be the result of a disaster.

(b) A loss will not be considered a qualifying loss if any of the following apply:

(1) The cause of the loss was not the result of disaster;

(2) The cause of loss was due to poor management decisions or poor farming practices, as determined by the FSA county committee on a case-by-case basis;

(3) The cause of loss was due to failure of the participant to re-seed or replant to the same crop in a county where it is customary to re-seed or replant after a loss before the final planting date;

(4) The cause of loss was due to water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected by the containment or release of the water;

(5) The cause of loss was due to conditions or events occurring outside of the applicable crop year growing season; or

(6) The cause of loss was due to a brownout.

(c) The following types of loss, regardless of whether they were the result of a disaster, are not qualifying losses:

(1) Losses to crops not intended for harvest in the applicable crop year;

(2) Losses of by-products resulting from processing or harvesting a crop, such as, but not limited to, cotton seed, peanut shells, wheat or oat straw, or corn stalks or stovers;

(3) Losses to home gardens; or to a crop subject to a de minimis election according to § 760.613;

(4) Losses of crops that were grazed or, if prevented from being planted, had the intended use of grazing; or

(5) Losses of first year seeding for forage production, or immature fruit crops.

(d) The following losses of ornamental nursery stock are not a qualifying loss:

(1) Losses caused by a failure of power supply or brownout as defined in § 760.602;

(2) Losses caused by the inability to market nursery stock as a result of quarantine, boycott, or refusal of a buyer to accept production;

(3) Losses caused by fires that are not the result of disaster;

(4) Losses affecting crops where weeds and other forms of undergrowth

in the vicinity of nursery stock have not been controlled; or

(5) Losses caused by the collapse or failure of buildings or structures.

(e) The following losses for honey, where the honey production by colonies or bees was diminished, are not a qualifying loss:

(1) Losses caused by the unavailability of equipment or the collapse or failure of equipment or apparatus used in the honey operation;

(2) Losses caused by improper storage of honey;

(3) Losses caused by bee feeding;

(4) Losses caused by the application of chemicals;

(5) Losses caused by theft or fire not caused by a natural condition including, but not limited to, arson or vandalism;

(6) Losses caused by the movement of bees by the participant or any other legal entity or person;

(7) Losses caused by disease or pest infestation of the colonies, unless approved by the Secretary;

(8) Losses of income from pollinators; or

(9) Losses of equipment or facilities.

§ 760.613 De minimis exception.

(a) Participants seeking the de minimis exception to the risk management purchase requirements of this subpart, must certify:

(1) That a specific crop on the farm is not a crop of economic significance on the farm; or

(2) That the administrative fee required for the purchase of NAP coverage for a crop exceeds 10 percent of the value of that coverage.

(b) To be eligible for a de minimis exception to the risk management purchase requirement in § 760.104, the participant must elect such exception at the same time the participant files the application for payment and the certification of interests, as specified in § 760.620, and specify the crop or crops for which the participant is requesting such exception.

(c) FSA will not consider the value of any crop elected under paragraph (b) of this section in calculating both the SURE guarantee and the total farm revenue.

(d) All provisions of this subpart apply in the event a participant does not obtain an exception according to this section.

§ 760.614 Lack of Access.

In addition to other provisions for eligibility provided for in this part, the Deputy Administrator may provide assistance to participants who suffered 2008 production losses that meet the lack of access provisions in 19 U.S.C. 2497(g)(7)(F), where deemed appropriate, and consistent with the statutory provision. Such a determination to exercise that authority, and the terms on which to exercise that authority, will be considered to be a determination of general effect, not a ''relief'' determination, and will not be considered by the Farm Service Agency to be appealable administratively either within FSA or before the National Appeals Division.

§ 760.620 Time and method of application and certification of interests.

(a) Each producer interested in obtaining a SURE payment must file an application for payment and provide an accurate certification of interests. The application will be on a form prescribed by FSA and will require information or certifications from the producer regarding any other assistance, payment, or grant benefit the producer has received for any of the producer's crops or interests on a farm as defined in this subpart; regardless of whether the crop or interest is covered in the farm's SURE guarantee according to § 760.631. The producer's certification of interests will help FSA establish whether the producer is an eligible participant.

(b) Eligible participants with a qualifying loss as defined in this subpart must submit an application for payment and certification of interests by March 1 of the calendar year that is two years after the relevant corresponding calendar year for the crop year which benefits are sought to be eligible for payment (for example, the final date to submit an application for a SURE payment for the 2009 crop year will be March 1, 2011). Producers who do not submit the application by that date will not be eligible for payment.

(c) To the extent available and practicable, FSA will assist participants with information regarding their interests in a farm, as of the date of certification, based on information already available to FSA from various sources. However, the participant is solely responsible for providing an accurate certification from which FSA can determine the participant's farm interests for the purposes of this program. As determined appropriate by FSA, failure of a participant to provide an accurate certification of interests as part of the application may render the participant ineligible for any assistance under SURE.

(d) To elect a de minimis exception to the risk management purchase requirement for a crop or crops, the participant must meet the requirements specified in § 760.613. When electing a de minimis exception, the participant must specify the crops for which the exception is requested and provide the certification and supporting documentation for that exception at the time the application and certification of interests is filed with FSA.

§ 760.621 Requirement to report acreage and production.

(a) As a condition of eligibility for payment under this subpart, participants must submit an accurate and timely report of all cropland, non-cropland, prevented planting, and subsequent crop acreage and production for the farm in all counties.

(b) Acreage and production reports that have been submitted to FSA for NAP or to RMA for crop insurance purposes may satisfy the requirement of paragraph (a) of this section provided that the participant's certification of interests submitted as required by § 760.620 corresponds to the report requirements in paragraph (a) of this section, as determined by the FSA county committee.

(c) Reports of production submitted for NAP or FCIA purposes must satisfy the requirements of NAP or FCIA, as applicable. In all other cases, in order for production reports or appraisals to be considered acceptable for SURE, production reports and appraisals must meet the requirements set forth in part 1437 of this title.

(d) In any case where production reports or an appraisal is not acceptable, maximum loss provisions apply as specified in § 760.637.

§ 760.622 Incorrect or false producer production evidence.

(a) If production evidence, including but not limited to acreage and production reports, provided by a participant is false or incorrect, as determined by the FSA county committee at any time after an application for payment is made, the FSA county committee will determine whether:

(1) The participant submitting the production evidence acted in good faith or took action to defeat the purposes of the program, such that the information provided was intentionally false or incorrect.

(2) The same false, incorrect, or unacceptable production evidence was submitted for payment(s) under crop insurance or NAP, and if so, for NAP covered crops, make any NAP program adjustments according to § 1437.15 of this title.

(b) If the FSA county committee determines that the production evidence submitted is false, incorrect, or unacceptable, and the participant who

submitted the evidence did not act in good faith or took action to defeat the purposes of the program, the provisions of § 760.109, including a denial of future program benefits, will apply. The Deputy Administrator may take further action, including, but not limited to, making further payment reductions or requiring refunds or taking other legal action.

(c) If the FSA county committee determines that the production evidence is false, incorrect, or unacceptable, but the participant who submitted the evidence acted in good faith, payment may be adjusted and a refund may be required.

§ 760.631 SURE guarantee calculation.

(a) Except as otherwise provided in this part, the SURE guarantee for a farm is the sum obtained by adding the dollar amounts calculated in paragraphs (a)(1) through (a)(3) of this section.

(1) For each insurable crop on the farm except for value loss crops, 115 percent of the product obtained by multiplying together:

(i) The price election. If a price election was not made or a participant is eligible as specified in §§ 760.105, 760.106, or 760.107, then the percentage of price will be 55 percent of the NAP established price;

(ii) The payment acres determined according to § 760.632;

(iii) The SURE yield as calculated according to § 760.638; and

(iv) The coverage level elected by the participant. If a coverage level was not elected or a participant is eligible as specified in §§ 760.105, 760.106, or 760.107, a coverage level of 50 percent will be used in the calculation.

(2) For each noninsurable crop on a farm except for value loss crops, 120 percent of the product obtained by multiplying:

(i) 100 percent of the NAP established price for the crop;

(ii) The payment acres determined according to § 760.632;

(iii) The SURE yield calculated according to § 760.638; and

(iv) 50 percent.

(3) The guarantee for value loss crops as calculated according to § 760.634.

(4) In the case of an insurable crop for which crop insurance provides for an adjustment in the guarantee liability, or indemnity, such as in the case of prevented planting, that adjustment will be used in determining the guarantee for the insurable crop.

(5) In the case of a noninsurable crop for which NAP provides for an adjustment in the level of assistance, such as in the case of unharvested crops, that adjustment will be used for determining the guarantee for the noninsurable crop.

(b) Those participants who are eligible according to §§ 760.105, 760.106, or 760.107 who do not have crop insurance or NAP coverage will have their SURE guarantee calculated based on catastrophic risk protection or NAP coverage available for those crops.

(c) FSA will not include in the SURE guarantee the value of any crop that has a de minimis exception, according to § 760.613.

(d) For crops where coverage may exist under both crop insurance and NAP, such as for pasture, rangeland, and forage, adjustments to the guarantee will be the product obtained by multiplying the county expected yield for that crop times:

(1) 115 percent;

(2) 100 percent of the NAP established price;

(3) The payment acres determined according to § 760.632;

(4) The SURE yield calculated according to § 760.638; and

(5) The coverage level elected by the participant.

(e) Participants who do not have a SURE yield as specified in § 760.638 will have a yield determined for them by the Deputy Administrator.

(f) The SURE guarantee may not be greater than 90 percent of the sum of the expected revenue for each of the crops on a farm, as determined by the Deputy Administrator.

§ 760.632 Payment acres.

(a) Payment acres as calculated in this section are used in determining both total farm revenue and the SURE guarantee for a farm. Payment acreage will be calculated using the lesser of the reported or determined acres shown to have been planted or prevented from being planted to a crop.

(b) Initial crop acreage will be the payment acreage for SURE, unless the provisions for subsequent crops in this section are met. Subsequently planted or prevented planted acre acreage is considered acreage for SURE only if the provisions of this section are met. All plantings of an annual or biennial crop are considered the same as a planting of an initial crop in tropical regions as defined in part 1437, subpart F, of this title.

(c) In cases where there is double cropped acreage, each crop may be included in the acreage for SURE only if the specific crops are either insured crops eligible for double cropping according to RMA or approved by the FSA State committee as eligible double cropping practices in accordance with procedures approved by the Deputy Administrator.

(d) Except for insured crops, participants with double cropped acreage not meeting the criteria in paragraph (c) of this section may have such acreage included in the acreage for SURE on more than one crop only if the participant submits verifiable records establishing a history of carrying out a successful double cropping practice on the specific crops for which payment is requested.

(e) Participants having multiple plantings may have each planting included in the SURE guarantee only if the planting meets the requirements of part 1437 of this title and all other provisions of this subpart are satisfied.

(f) Provisions of part 718 of this title specifying what is considered prevented planting and how it must be documented and reported will apply to this payment acreage for SURE.

(g) Subject to the provisions of this subpart, the FSA county committee will:

(1) Use the most accurate data available when determining planted and prevented planted acres; and

(2) Disregard acreage of a crop produced on land that is not eligible for crop insurance or NAP.

(h) For any crop acreage for which crop insurance or NAP coverage is canceled, those acres will no longer be considered the initial crop and will, therefore, no longer be eligible for SURE.

(i) Notwithstanding any other provisions of these or other applicable regulations that relate to tolerance in part 718 of this title, if a farm has a crop that has both FSA and RMA acreage for insured crops, payment acres for the SURE guarantee calculation will be based on acres for which an indemnity was received if RMA acres do not differ from FSA acres by more than the larger of 5 percent or 10 acres not to exceed 50 acres. If the difference between FSA and RMA acres is more than the larger of 5 percent or 10 acres not to exceed 50 acres, then the payment acres for the SURE guarantee will be calculated using RMA acres. In that case, the participant will be notified of the discrepancy and that refunds of unearned payments may be required after FSA and RMA reconcile acreage data.

§ 760.633 2008 SURE guarantee calculation.

(a) For a participant who is eligible due to the 2008 buy-in waiver for risk management purchase under the provisions of § 760.105(c), the SURE guarantee for their farm for the 2008 crop will be calculated according to § 760.631, or according to § 760.634 for value loss crops, with the exception that the:

(1) Price election in § 760.631(a)(1)(i) is 100 percent of the NAP established price for the crop;

(2) Coverage level in § 760.631(a)(1)(iv) is 70 percent; and

(3) The percent specified in § 760.631(a)(2)(iv) is 70 percent instead of 50 percent; and

(4) Coverage level used in § 760.634(a)(1)(ii) is 70 percent; and

(5) The percent specified in § 760.634(a)(2)(ii) is 70 percent instead of 50 percent.

(b) For those 2008 crops that meet the requirements of §§ 760.104, 760.105(a), 760.106, or 760.107, the SURE guarantee will be the higher of:

(1) The guarantee calculated according to § 760.631, or according to § 760.634 for value loss crops, with the exception that the percent specified in §§ 760.631(a)(1) and 760.634(a)(1) will be 120 percent instead of 115 percent;

(2) The guarantee calculated according to § 760.631, or according to § 760.634 for value loss crops, will be used with the exception that the:

(i) Price election in § 760.631(a)(1)(i) is 100 percent of the NAP established price for the crop; and

(ii) Coverage level in §§ 760.631(a)(1)(iv) and 760.634(a)(1)(ii) will be 70 percent; and

(iii) The percent specified in §§ 760.631(a)(2)(iv) and 760.634(a)(2)(ii) will be 70 percent instead of 50 percent.

§ 760.634 SURE guarantee for value loss crops.

(a) The SURE guarantee for value loss crops will be the sum of the amounts calculated in paragraphs (a)(1) and (a)(2) of this section, except as otherwise specified.

(1) For each insurable crop on the farm, 115 percent of the product obtained by multiplying:

(i) The value of inventory immediately prior to disaster, and

(ii) The coverage level elected by the participant. If a coverage level was not elected or a participant is eligible as specified in §§ 760.106 or 760.107, a coverage level of 27.5 percent will be used in the calculation.

(2) For each noninsurable crop on the farm, 120 percent of the product obtained by multiplying:

(i) The value of inventory immediately prior to a disaster, and

(ii) 50 percent.

(b) Aquaculture participants who received assistance under the Aquaculture Grant Program (Pub. L. 111–5) will not be eligible for SURE assistance on those species for which a grant benefit was received under the Aquaculture Grant Program for feed losses associated with that species.

(c) In the case of an insurable value loss crop for which crop insurance provides for an adjustment in the guarantee, liability, or indemnity, such as in the case of inventory exceeding peak inventory value, the adjustment will be used in determining the SURE guarantee for the insurable crop.

(d) In the case of a noninsurable value loss crop for which NAP provides for an adjustment in the level of assistance, such as in the case of unharvested field grown inventory, the adjustment will be used in determining the SURE guarantee for the noninsurable crop.

§ 760.635 Total farm revenue.

(a) For the purpose of SURE payment calculation, total farm revenue will equal the sum obtained by adding the amounts calculated in paragraphs (a)(1) through (a)(12) of this section.

(1) The estimated actual value for each crop produced on a farm, except for value loss crops, which equals the product obtained by multiplying:

(i) The actual production of the payment acres for each crop on a farm for purposes of determining losses under FCIA or NAP; and

(ii) NAMP, as calculated for the marketing year as specified in § 760.640 and as adjusted if required as specified in § 760.641.

(2) The estimated actual value for each value loss crop produced on a farm that equals the value of inventory immediately after disaster.

(3) 15 percent of the amount of any direct payments made to the participant under part 1412 of this title.

(4) The total amount of any counter-cyclical and average crop revenue election payments made to the participant under part 1412 of this title.

(5) The total amount of any loan deficiency payments, marketing loan gains, and marketing certificate gains made to the participant under parts 1421 and 1434 of this title.

(6) The amount of payments for prevented planting.

(7) The amount of crop insurance indemnities.

(8) The amount of NAP payments received.

(9) The value of any guaranteed payments made to a participant in lieu of production pursuant to an agreement or contract, if the crop is included in the SURE guarantee.

(10) Salvage value for any crops salvaged.

(11) The value of any other disaster assistance payments provided by the Federal Government for the same loss for which the eligible participant applied for SURE.

(12) For crops for which the eligible participant received a waiver under the provisions of § 760.105(c) or obtained relief according to § 760.106, the value determined by FSA based on what the participant would have received, irrespective of any other provision, if NAP or crop insurance coverage had been obtained.

(b) Sale of plant parts or by-products, such as straw, will not be counted as farm revenue.

(c) For value loss crops:

(1) Other inventory on hand or marketed at some time other than immediately prior to and immediately after the disaster event are irrelevant for revenue purposes and will not be counted as revenue for SURE.

(2) Revenue will not be adjusted for market loss.

(3) Quality losses will not be considered in determining revenue.

(4) In no case will market price declines in value loss crops, due to any cause, be considered in the calculation of payments for those crops.

§ 760.636 Expected revenue.

The expected revenue for each crop on a farm is:

(a) For each insurable crop, except value loss crops, the product obtained by multiplying:

(1) The SURE yield as specified in § 760.638;

(2) The payment acres as specified in § 760.632; and

(3) 100 percent of the price for the crop used to calculate a crop insurance indemnity for an applicable policy of insurance if a crop insurance indemnity is triggered. If a price is not available, then the price is 100 percent of the NAP established price for the crop, and

(b) For each noninsurable crop, except value loss crops, the product obtained by multiplying

(1) The SURE yield as specified in § 760.638;

(2) The payment acres as specified in § 760.632; and

(3) 100 percent of the NAP price.

(c) For each value loss crop, the value of inventory immediately prior to the disaster.

§ 760.637 Determination of production.

(a) Except for value loss crops, production for the purposes of this part includes all harvested, appraised, and assigned production for the payment acres determined according to § 760.632.

(b) The FSA county committee will use the best available data to determine production, including RMA and NAP loss records and yields for insured and noninsured crops.

(c) The production of any eligible crop harvested more than once in a crop

year will include the total harvested production from all harvests.

(d) Crop production losses occurring in tropical regions, as defined in part 1437, subpart F of this chapter, will be based on a crop year beginning on January 1 and ending on December 31 of the same calendar year. All crop harvests in tropical regions that take place between those dates will be considered a single crop.

(e) Any record of an appraisal of crop production conducted by RMA or FSA through a certified loss adjustor will be used if available. Unharvested appraised production will be included in the calculation of revenue under SURE. If the unharvested appraised crop is subsequently harvested for the original intended use, the larger of the actual or appraised production will be used to determine payment.

(1) If no appraisal is available, the participant is required to submit verifiable or reliable production evidence.

(2) If the participant does not have verifiable or reliable production evidence, the FSA county committee will use the higher of the participant's crop certification or the maximum average loss level to determine the participant's crop production losses.

(f) Production will be adjusted based on a whole grain equivalent, as established by FSA, for all crops with an intended use of grain, but harvested as silage, cobbage, or hay, cracked, rolled, or crimped.

(g) For crops sold in a market that is not a recognized market for that crop and has no established county expected yield and NAMP, the quantity of such crops will not be considered production; rather, 100 percent of the salvage value will be included in the revenue calculation.

(h) Production from different counties that is commingled on the farm before it was a matter of record and cannot be separated by using records or other means acceptable to FSA will have the NAMP prorated to each respective county by FSA. Commingled production may be attributed to the applicable county, if the participant made the location of production of a crop a matter of record before commingling, if the participant does either of the following:

(1) Provides copies of verifiable documents showing that production of the crop was purchased, acquired, or otherwise obtained from the farm in that county; or

(2) Had the farm's production in that county measured in a manner acceptable to the FSA county committee.

(i) The FSA county committee will assign production for the purpose of NAMP for the farm if the FSA county committee determines that the participant failed to provide verifiable or reliable production records.

(j) If RMA loss records are not available, or if the FSA county committee determines that the RMA loss records as reported by the insured participant appear to be questionable or incomplete, or if the FSA county committee makes inquiry, then participants are responsible for:

(1) Retaining and providing, when required, the best available verifiable and reliable production records available for the crops;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of production for the crop on a farm, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the FSA county committee; and

(5) Providing supporting documentation if the FSA county committee has reason to question the disaster event or that all production has been taken into account.

(k) The participant must supply verifiable or reliable production records to substantiate production to the FSA county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, acceptable production records include: Commercial receipts; settlement sheets; warehouse ledger sheets or load summaries; or appraisal information from a loss adjuster acceptable to FSA. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of by means other than commercial channels, acceptable production records for these purposes include: Truck scale tickets; appraisal information from a loss adjuster acceptable to FSA; contemporaneous reliable diaries; or other documentary evidence, such as contemporaneous reliable measurements. Determinations of reliability with respect to this paragraph will take into account, as appropriate, the ability of the agency to verify the evidence as well as the similarity of the evidence to reports or data received by FSA for the crop or similar crops. Other factors deemed relevant may also be taken into account.

(l) If no verifiable or reliable production records are available, the FSA county committee will use the higher of the participant's certification or the maximum average loss level to determine production.

(m) Participants must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

(n) FSA may verify the production evidence submitted with records on file at the warehouse, gin, or other entity that received or may have received the reported production.

§ 760.638 Determination of SURE yield.

(a) Except for value loss crops as specified in § 760.634, a SURE yield will be determined for each crop, type, and intended use on a farm, using the higher of the participant's weighted:

(1) Adjusted actual production history yield as determined in paragraph (b) of this section; or

(2) Counter-cyclical yield as determined in paragraph (c) of this section.

(b) The adjusted actual production history yield, as defined in § 760.602, will be weighted by the applicable crop year total planted and prevented planted acres, by crop, type, and intended use for each county. RMA data will be used for calculating the SURE yield for insured crops.

(c) The counter-cyclical yield for a crop on a farm will be weighted based on total planted and prevented planted acres in the county for the current crop year.

(d) Participants who do not purchase crop insurance or NAP coverage, but who are otherwise eligible for payment, will have a SURE yield determined by the FSA county committee as follows:

(1) A weighted yield, based on planted and prevented planted acres, the location county, crop type, and intended use, will be determined at 65 percent of the county expected yield for each crop.

(2) The SURE yield will be the higher of the yield calculated using the method in paragraph (d)(1) of this section or the weighted counter-cyclical yield as determined in paragraph (c) of this section.

(e) For those participants with crop insurance but without an adjusted actual production history yield, a SURE yield will be determined by the applicable FSA county committee. This paragraph will apply in the case where the insurance policy does not require an actual production history yield, or where a participant has no production history.

§ 760.640 National average market price.

(a) The Deputy Administrator will establish the National Average Market Price (NAMP) using the best sources available, as determined by the Deputy

Administrator, which may include, but are not limited to, data from NASS, Cooperative Extension Service, Agricultural Marketing Service, crop insurance, and NAP.

(b) NAMP may be adjusted by the FSA State committee, in accordance with instructions issued by the Deputy Administrator and as specified in § 760.641, to recognize average quality loss factors that are reflected in the market by county or part of a county.

(c) With respect to a crop for which an eligible participant on a farm receives assistance under NAP, the NAMP will not exceed the price of the crop established under NAP.

(d) To the extent practicable, the NAMP will be established on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by FSA.

(e) NAMP may be adjusted by the FSA State committee, as authorized by The Deputy Administrator, to reflect regional variations in price consistent with those prices established under the FCIA or NAP.

§ 760.641 Adjustments made to NAMP to reflect loss of quality.

(a) The Deputy Administrator will authorize FSA county committees, with FSA State committee concurrence, to adjust NAMP for a county or part of a county:

(1) To reflect the average quality discounts applied to the local or regional market price of a crop due to a reduction in the intrinsic characteristics of the production resulting from adverse weather, as determined annually by the State office of the FSA; or

(2) To account for a crop for which the value is reduced due to excess moisture resulting from a disaster related condition.

(3) For adjustments specified in paragraphs (a)(1) and (a)(2) of this section, an adjustment factor that represents the regional or local price received for the crop in the county will be calculated by the FSA State committee. The adjustment factor will be based on the average actual market price compared to NAMP.

(b) For adjustments made under paragraph (a) of this section, participants must provide verifiable evidence of actual or appraised production, clearly indicating an average loss of value caused by poor quality or excessive moisture that meets or exceeds the quality adjustment for the county or part of a county established in paragraph (a)(3) of this section to be eligible to receive the quality-adjusted NAMP as part of their SURE payment calculation. In order to be considered at all for the purpose of quality adjustments, the verifiable evidence of production must itself detail the extent of the quality loss for a specific quantity. With regard to test evidence, in addition to meeting all the requirements of this section, tests must have been completed by January 1 of the year following harvest.

§ 760.650 Calculating SURE.

(a) Subject to the provision of this subpart, SURE payments for crop losses in crop year 2008 and subsequent crop years will be calculated as the amount equal to 60 percent of the difference between:

(1) The SURE guarantee, as specified in § 760.631, 760.633 or 760.634 of this subpart, and

(2) The total farm revenue, as specified in § 760.635.

(b) In addition to the other provisions of this subpart and subpart B of this part, SURE payments may be adjusted downward as necessary to insure compliance with the payment limitations in subpart B and to insure that payments do not exceed the maximum amount specified in § 760.108(a)(1) or (b)(1) or otherwise exceed the perceived intent of 19 U.S.C. 2497(j). Such adjustments can include, but are not limited to, adjustments to insure that there is no duplication of benefits as specified in § 760.108(c).

Signed in Washington, DC, December 18, 2009.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. E9–30632 Filed 12–22–09; 4:15 pm]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities

CFR Correction

In Title 10 of the Code of Federal Regulations, Parts 1 to 50, revised as of January 1, 2009, on page 913, in § 50.72, reinstate the text of footnote 1 to read as follows:

[1] Other requirements for immediate notification of the NRC by licensed operating nuclear power reactors are contained elsewhere in this chapter, in particular §§ 20.1906, 20.2202, 50.36, 72.216, and 73.71.

[FR Doc. E9–30739 Filed 12–24–09; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. 1379]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure) to reflect no change in the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW). The exemption threshold remains $39 million. The CPIW decreased by 0.98 percent during the twelve-month period ending in November 2009, but this change is too small to warrant any reduction in the exemption threshold pursuant to Regulation C. Therefore, depository institutions with assets of $39 million or less as of December 31, 2009 are exempt from collecting data in 2010.

DATES: Effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report those data to their federal supervisory agencies and make the data available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA.

Prior to 1997, HMDA exempted depository institutions with assets totaling $10 million or less, as of the preceding year-end. Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the CPIW for 1996 exceeded the CPIW for 1975, and it provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The

one-time adjustment increased the exemption threshold to $28 million for 1997 data collection.

Section 203.2(e)(1)(i) of Regulation C provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million dollars. Pursuant to this section, the Board has adjusted the threshold annually, as appropriate.

For 2009, the threshold was $39 million. During the twelve-month period ending in November 2009, the CPIW decreased by 0.98 percent. That decrease results in a new threshold, before rounding, of about $38.62 million dollars, which must be rounded to the nearest million dollars pursuant to Regulation C. As a result, the exemption threshold remains $39 million. Thus, depository institutions with assets of $39 million or less as of December 31, 2009 are exempt from collecting data in 2010. An institution's exemption from collecting data in 2010 does not affect its responsibility to report data it was required to collect in 2009.

Final Rule

Under the Administrative Procedures Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary. 5 U.S.C. 553(b)(B). The amendment in this notice is technical. Comment 2(e)-2 is amended to update the exemption threshold. This amendment merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

■ 2. In Supplement I to part 203, under *Section 203.2 Definitions, 2(e) Financial institution,* paragraph 2(e)-2 is revised to read as follows:

Supplement I to Part 203—Staff Commentary

* * * * *

Section 203.2 Definitions

* * * * *

2(e) Financial institution.

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2010, the asset-size exemption threshold is $39 million. Depository institutions with assets at or below $39 million as of December 31, 2009 are exempt from collecting data for 2010.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 18, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–30603 Filed 12–24–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

Resolution and Receivership Rules

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 300 to 499, revised as of January 1, 2009, make the following corrections:

In Appendix C to Part 360, on page 522, in the table, in the first column, add the numbers 1, 2, 3, 4, 1, 2, 3 at the end of entries 17 through 23, respectively, and on page 523, in the same table, in the first column, add the numbers 1 through 6 at the end of entries 28 through 33, respectively.

In Appendix F to Part 360, on page 528, in the table, in the first column, add the numbers 1 and 2 at the end of entries 4 and 5, respectively; and on page 529, in the same table, in the first column, add the numbers 1, 2, 1, 2, 3, 1, 2 at the end of entries 13 through 19, respectively.

[FR Doc. E9–30738 Filed 12–24–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0938 Directorate Identifier 2009–CE–052–AD; Amendment 39–16140; AD 2009–26–05]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Model PC–7 Airplanes

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

ACTION: Final rule.

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

This Airworthiness Directive (AD) is prompted due to the discovery of cracks caused by stress corrosion in the main-gear support struts. All the main-gear support struts that had cracks were made from material AA2024–T351 which has a lower resistance to stress corrosion cracking.

Such cracks, if undetected, could lead to the failure of the strut during landing which could then cause the Main Landing Gear (MLG) to collapse.

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

DATES: This AD becomes effective February 1, 2010.

On February 1, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090; e-mail: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 9, 2009 (74 FR 52156). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is prompted due to the discovery of cracks caused by stress corrosion in the main-gear support struts. All the main-gear support struts that had cracks were made from material AA2024–T351 which has a lower resistance to stress corrosion cracking.

Such cracks, if undetected, could lead to the failure of the strut during landing which could then cause the Main Landing Gear (MLG) to collapse.

In order to correct and control the situation, this AD mandates the identification of the main-gear support struts to check if they have rounded clevis lugs and a Non-Destructive Inspection (NDI) procedure on the main-gear support struts if they have chamfered clevis lugs.

For main-gear support struts with chamfered clevis lugs that show cracks during the NDI, the MCAI also requires replacing any cracked main-gear support struts with parts of improved design. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

PILATUS Aircraft Ltd. states that there is a typographical error in one of the affected part numbers (P/N) referenced in the proposed AD. The P/N should read 114.48.07.127 instead of 114.48.07.172.

We agree with the commenter and will make that change in final rule AD action.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 10 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $3,200, or $320 per product.

In addition, we estimate that any necessary follow-on actions will take about 20 work-hours and require parts costing $20,000, for a cost of $21,600 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–26–05 Pilatus Aircraft Ltd: Amendment 39–16140; Docket No. FAA–2009–0938; Directorate Identifier 2009–CE–052–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 1, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PC–7 airplanes, manufacturer serial numbers 101 through 618 that are:

(1) Equipped with main-gear support struts part number (P/N) 532.10.09.039 or P/N 114.48.07.127; and

(2) Certificated in any category.

Subject

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

Reason

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

This Airworthiness Directive (AD) is prompted due to the discovery of cracks caused by stress corrosion in the main-gear support struts. All the main-gear support struts that had cracks were made from material AA2024–T351 which has a lower resistance to stress corrosion cracking.

Such cracks, if undetected, could lead to the failure of the strut during landing which could then cause the Main Landing Gear (MLG) to collapse.

In order to correct and control the situation, this AD mandates the identification of the main-gear support struts to check if they have rounded clevis lugs and a Non-Destructive Inspection (NDI) procedure on the main-gear support struts if they have chamfered clevis lugs.

For main-gear support struts with chamfered clevis lugs that show cracks during the NDI, the MCAI also requires replacing any cracked main-gear support struts with parts of improved design. You may obtain further information by examining the MCAI in the AD docket.

Actions and Compliance

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

(1) Within the next 30 hours time-in-service (TIS) after February 1, 2010 (the effective date of this AD) or within the next 30 days after February 1, 2010 (the effective date of this AD), whichever occurs first, visually inspect the left and right main-gear support struts to determine if they have rounded or chamfered clevis lugs. Do the inspection following paragraph 3.A. of Pilatus PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008.

(2) Based on the results of the inspection required in paragraph (f)(1) of this AD, if the main-gear support strut has rounded clevis lugs, no further action is required except the requirement specified in paragraph (f)(4) of this AD still applies. Make an entry in the airplane logbook to show compliance with this AD. Based on the reports of the results of the inspection required by this AD, further rulemaking action may be taken to mandate repetitive inspections or terminating action.

(3) Based on the results of the inspection required in paragraph (f)(1) of this AD, if the main-gear support strut has chamfered clevis lugs, before further flight do a Non-Destructive Inspection (NDI). Do the NDI following paragraphs 3.B. through 3.E. of Pilatus PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008.

(i) If cracks are found during the inspection required in paragraph (f)(3) of this AD:

(A) Before further flight after the inspection, replace any cracked main-gear support struts with new main-gear support struts, P/N 532.10.09.128. Do the replacement following Pilatus PC–7 Service Bulletin No. 32–025, Rev. No. 1, dated November 17, 2008.

(B) Within the next 10 days after the inspection, report the cracks to Pilatus Aircraft LTD., Customer Liaison Manager, CH–6371 STANS, Switzerland, using the Crack Report Form (Figure 4) in Pilatus PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008.

(ii) If no cracks are found during the inspection required in paragraph (f)(3) of this AD, no further action is required. Make an entry in the airplane logbook to show compliance with this AD.

(4) As of 30 days after February 1, 2010 (the effective date of this AD), do not install any main-gear support struts, P/N 532.10.09.039 or P/N 114.48.07.127, with chamfered clevis lugs.

Note 1: If you have any main-gear support struts, P/N 532.10.09.039 or P/N 114.48.07.127, with chamfered clevis lugs held as spares, you may return them to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 STANS, Switzerland, for replacement with a new main-gear support strut, P/N 532.10.09.128.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; e-mail: *doug.rudolph@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Federal Office of Civil Aviation AD HB–2009–011, dated September 10, 2009; and Pilatus PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008; and Pilatus PC–7 Service Bulletin No. 32–025, Rev. No. 1, dated November 17, 2008, for related information.

Material Incorporated by Reference

(i) You must use Pilatus PC–7 Service Bulletin No. 32–024, Rev. No. 1, dated November 17, 2008; and Pilatus PC–7 Service Bulletin No. 32–025, Rev. No. 1, dated November 17, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pilatus Aircraft LTD., Customer Service Manager, CH–6371 STANS, Switzerland; *telephone:* +41 (0)41 619 62 08; fax: +41 (0)41 619 73 11; *Internet: http://www.pilatus-aircraft.com/*, or *e-mail: snolan@pilatus-aircraft.com*.

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

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

Issued in Kansas City, MO, on December 8, 2009.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29983 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0911; Directorate Identifier 2002–NM–12–AD; Amendment 39–16138; AD 2009–26–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900, and 747–400 Series Airplanes; and Model 757, 767, and 777 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900, and 747–400 series airplanes; and Model 757, 767, and 777 airplanes. This AD requires modifying the static inverter by replacing resistor R170 with a new resistor and relocating the new resistor. This AD results from evaluation of the carbon resistor, which revealed a failure

mode that can cause the resistor to ignite, involving adjacent capacitors as well. We are issuing this AD to prevent a standby static inverter from overheating, which could result in smoke in the flight deck and cabin and loss of the electrical standby power system.

DATES: This AD becomes effective February 1, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 1, 2010.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a second supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900, and 747–400 series airplanes; and Model 757, 767, and 777 airplanes. That second supplemental NPRM was published in the **Federal Register** on January 12, 2009 (74 FR 1159). That second supplemental NPRM proposed to require modifying the static inverter by replacing resistor R170 with a new resistor and relocating the new resistor.

Actions Since Issuance of Second Supplemental NPRM

Since issuance of the second supplemental NPRM, Boeing has issued the revised service bulletins listed in the following table:

REVISED SERVICE BULLETINS

Model—	Boeing—
737–300, –400, –500 series airplanes	Alert Service Bulletin 737–24A1166, Revision 4, dated May 21, 2009.
757–200, –200CB, –200PF series airplanes	Special Attention Service Bulletin 757–24–0110, Revision 1, dated August 6, 2009.
757–300 series airplanes	Special Attention Service Bulletin 757–24–0111, Revision 1, dated August 6, 2009.

No additional work is necessary for airplanes on which the modification specified in Boeing Alert Service Bulletin 737–24A1166, Revision 3, dated July 25, 2007, has been done. Revision 4 clarifies certain sections, moves airplanes from Group 2 to Group 1 in the effectivity, and removes the Group 2 work instructions.

Boeing Special Attention Service Bulletin 757–24–0110, Revision 1, dated August 6, 2009, adds an inspection of certain static inverter part numbers to make sure only approved part numbers are installed; however, the proposed modification requires modifying the static inverter by replacing the resistor with a new resistor having an approved part number. Revision 1 also moves airplanes from Group 2 to Group 1 in the effectivity, and the Group 2 work instructions were deleted. Therefore, no additional work is necessary for airplanes modified in accordance with Boeing Special Attention Service Bulletin 757–24–0110, dated April 28, 2005.

Boeing Special Attention Service Bulletin 757–24–0111, Revision 1, dated August 6, 2009, also adds an inspection of certain static inverter part numbers to make sure only approved part numbers are installed; however, the proposed modification requires modifying the static inverter by replacing the resistor with a new resistor having an approved part number. Revision 1 also moves airplanes from Group 2 to Group 1 in the effectivity, and the Group 2 work instructions were deleted. No additional work is necessary for airplanes modified in accordance with Boeing Special Attention Service Bulletin 757–24–0111, dated April 28, 2005.

We have revised Table 1 of this AD to refer to the latest revisions of the service bulletins and added a new paragraph (h) to this AD to give credit for actions done in accordance with the earlier revisions that were referenced in Table 1 of the NPRM.

Comments

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

Support for the Second Supplemental NPRM

Northwest Airlines has no objection to the second supplemental NPRM; Boeing concurs with the content of the second supplemental NPRM.

Request To Permit Installation of Static Inverters Having Certain Part Numbers

American Airlines (AAL) and FedEx Express request that we allow installation of static inverters having certain part numbers.

AAL asks that we permit installation of static inverters having part numbers (P/Ns) S282T004–2, –3, and –4. AAL states that those static inverters do not have an overheating safety concern, which is the unsafe condition addressed in the second supplemental NPRM. AAL adds that static inverters that have P/Ns S282T004–2, –3, and –4 are fully interchangeable on the Model 757 fleet.

FedEx Express asks that Boeing Special Attention Service Bulletin 757–24–0110, dated April 28, 2005, be revised to include Avionics Instruments static inverters having P/Ns S282T004–28 and S282T004–30 as acceptable to remain on Model 757 airplanes. FedEx Express adds that since issuance of the original issue of Boeing Special Attention Service Bulletin 757–24–0110, those static inverters have been installed on some Model 757 airplanes and have been added to the Boeing Illustrated Parts Catalog. FedEx Express notes that P/Ns S282T004–2, –3, –4, –28, and –30 should be the P/Ns for the static inverters installed in accordance with the requirements in the second

supplemental NPRM. FedEx Express adds that combining Groups 1 and 2 into one group would accomplish this task.

We agree with the commenters' requests and provide the following explanation. As noted previously, Boeing has issued Special Attention Service Bulletin 757–24–0110, Revision 1, dated August 6, 2009. The effectivity specified in Revision 1 is changed to move airplanes from Group 2 to Group 1, and to remove the Group 2 work instructions by combining Group 2 work instructions with Group 1. The work instructions specified in Revision 1 also add an inspection for certain static inverter part numbers that allows for installation of static inverters having P/Ns S282T004–2, –3, –4, –25, –28, and –30. Inspection of the static inverter P/Ns will prevent unnecessary replacement of approved static inverters. We have changed the applicability in paragraph (c) of this AD to identify Revision 1 of Boeing Special Attention Service Bulletin 757–24–0110.

Request To Include Revised Service Information

AAL states that it found a discrepancy in Figure 1 of Boeing Special Attention Service Bulletin 767–24–0160, dated June 30, 2005 (referred to in the second supplemental NPRM), and asks that this service bulletin be revised to correct the discrepancy. AAL adds that the discrepancy is in Figure 1, which specifies an inspection of the static inverter on Groups 1 and 3 airplanes. Figure 2 also contains an error which specifies the actions are applicable to Group 3 airplanes. However, Group 2 airplanes are not identified in either of these figures. AAL also notes that in Boeing Service Message 1–1156909141–2, Boeing specifies that static inverters having P/Ns S282T004–2, –3, –4 are acceptable for installation across the Model 757 airplane fleet since the Model 767 airplane fleet uses the same static inverter.

We acknowledge the commenter's concern and agree that the error in Figure 1 of Boeing Special Attention Service Bulletin 767–24–0160, dated June 30, 2005, should be corrected in a revision; but we do not consider that delaying the final rule until after the release of a future revision is warranted. The original issue of Boeing Special Attention Service Bulletin 767–24–0160 includes sufficient information to accomplish the modification of the static inverter. However, we have added new paragraph (g) to this AD to exclude Group 2 airplanes that have a static inverter with part number S282T004–2, S282T004–3, or S282T004–4, from the modification requirement. We have re-identified subsequent paragraphs accordingly.

Request To Change Cost Impact Section

AAL states that the cost estimate for material and labor necessary for accomplishing the modification on its airplanes is more than the estimate in the second supplemental NPRM.

We infer that AAL is asking that the work hours and cost specified in the Cost Impact section of the AD be increased. We do not agree. The cost information below describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours (up to 2 hours, depending on airplane configuration) necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. 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 incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. We have not changed the AD in this regard.

Request for Clarification

Cargolux Airlines International S.A. states that it has followed the history of the proposed rule since 2003, and is not aware of any new event reported on the static inverters since that time. Cargolux asks for clarification that only one airplane was affected prior to 2003, and no airplanes were affected after 2003. Cargolux also asks for the number of occurrences of R170 resistors overheating, and the number of units manufactured.

We acknowledge the commenter's request and provide the following clarification. Prior to 2003 there were 39 static inverter failures on 39 airplanes; since 2003 there have been 15 inverters on 15 airplanes that failed due to the R170 resistor overheating, and approximately 9,400 units have been manufactured.

Explanation of Additional Paragraph in the Final Rule

We have added a new paragraph (d) to this AD to provide the Air Transport Association (ATA) of America code 24: Electrical power. This code is added to make this AD parallel with other new AD actions. We have reidentified subsequent paragraphs accordingly.

Conclusion

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

Costs of Compliance

There are approximately 3,856 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,882 airplanes of U.S. registry will be affected by this AD. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	Up to 2 hours, depending on airplane configuration.	$80	$0	Between $80 and $160.	1,882	Up to $301,120.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if the AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the

time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–26–03 Boeing: Amendment 39–16138. Docket No. FAA–2009–0911; Directorate Identifier 2002–NM–12–AD.

Effective Date

(a) This AD becomes effective February 1, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplanes, certificated in any category, as identified in the applicable Boeing service bulletin specified in Table 1 of this AD:

TABLE 1—APPLICABILITY

Model—	Boeing—
737–600, –700, –700C, –800, –900 series airplanes.	Special Attention Service Bulletin 737–24–1165, Revision 1, dated October 20, 2005.
737–300, –400, –500 series airplanes	Alert Service Bulletin 737–24A1166, Revision 4, dated May 21, 2009.
747–400, –400D, –400F series airplanes	Service Bulletin 747–24–2254, Revision 1, dated March 5, 2007.
757–200, –200CB, –200PF series airplanes	Special Attention Service Bulletin 757–24–0110, Revision 1, dated August 6, 2009.
757–300 series airplanes	Special Attention Service Bulletin 757–24–0111, Revision 1, dated August 6, 2009.
767–200, –300, –300F series airplanes	Special Attention Service Bulletin 767–24–0160, dated June 30, 2005.
767–400ER series airplanes	Special Attention Service Bulletin 767–24–0161, dated June 30, 2005.
777–200, –300, –300ER series airplanes	Service Bulletin 777–24–0095, Revision 1, dated January 3, 2007.

Subject

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

Unsafe Condition

(e) This AD results from evaluation of the carbon resistor, which revealed a failure mode that can cause the resistor to ignite, involving adjacent capacitors as well. The Federal Aviation Administration is issuing this AD to prevent a standby static inverter from overheating, which could result in smoke in the flight deck and cabin and loss of the electrical standby power system.

Modification

(f) At the time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable: Modify the static inverter by removing resistor R170 from the logic control card assembly and replacing it with a new resistor, and relocating the new resistor to the solder side of the printed circuit board, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 1 of this AD, except as provided by paragraph (g) of this AD.

(1) For Model 737, 757, and 767 airplanes: Within 42 months after the effective date of this AD.

(2) For Model 747 and 777 airplanes: Within 60 months after the effective date of this AD.

(g) For Group 2 airplanes identified Boeing Special Attention Service Bulletin 767–24–0160, dated June 30, 2005: Airplanes having a static inverter with part number S282T004–2, S282T004–3, or S282T004–4, are not required to do the modification specified in paragraph (f) of this AD.

(h) Actions accomplished before the effective date of this AD in accordance with the applicable Boeing service bulletin specified in Table 2 of this AD, are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 2—PREVIOUSLY ISSUED SERVICE INFORMATION

Boeing —	Revision—	Dated—
Alert Service Bulletin 737–24A1166	3	July 25, 2007.
Special Attention Service Bulletin 757–24–0110	Original	April 28, 2005.
Special Attention Service Bulletin 757–24–0111	Original	April 28, 2005.

Note 1: The Boeing service bulletins specified in Table 1 of this AD refer to Avionic Instruments Inc. Service Bulletins 1–002–0102–1000–24–28, Revision A, dated June 22, 2005; and Revision B, dated July 24, 2006; as additional sources of guidance for accomplishing the modification required by paragraph (f) of this AD.

Alternative Methods of Compliance

(i)(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: Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov*.

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

Material Incorporated by Reference

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

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Boeing—	Revision—	Dated—
Alert Service Bulletin 737–24A1166	4	May 21, 2009.
Service Bulletin 747–24–2254	1	March 5, 2007.
Service Bulletin 777–24–0095	1	January 3, 2007.
Special Attention Service Bulletin 737–24–1165	1	October 20, 2005.
Special Attention Service Bulletin 757–24–0110	1	August 6, 2009.
Special Attention Service Bulletin 757–24–0111	1	August 6, 2009.
Special Attention Service Bulletin 767–24–0160	Original	June 30, 2005.
Special Attention Service Bulletin 767–24–0161	Original	June 30, 2005.

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

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

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

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

Issued in Renton, Washington, on December 4, 2009.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29963 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1209; Directorate Identifier 2009–NM–151–AD; Amendment 39–16147; AD 2008–04–11 R1]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 707 Airplanes, and Model 720 and 720B Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to all Model 707 airplanes, and Model 720 and 720B series airplanes. That AD currently requires revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires an initial inspection to phase in certain repetitive AWL inspections, and repair if necessary. This AD clarifies the intended effect of the AD on spare and on-airplane fuel tank system components. This AD results from design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective January 12, 2010.

On March 28, 2008 (73 FR 9666, February 22, 2008), the Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD.

We must receive any comments on this AD by February 11, 2010.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The 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: Thomas Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6508; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On February 13, 2008, we issued AD 2008–04–11, Amendment 39–15383 (73 FR 9666, February 22, 2008). That AD applied to all Model 707 airplanes, and Model 720 and 720B series airplanes. That AD required revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also required an initial inspection to phase in certain repetitive AWL inspections, and repair if necessary. That AD resulted from a design review of the fuel tank systems. The actions specified in that AD are intended to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Actions Since AD was Issued

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the FAA-approved maintenance program. But once the CDCCLs are incorporated into the FAA-approved maintenance program, future maintenance actions on components must be done in accordance with those CDCCLs.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2008–04–11. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components.

Explanation of Additional Changes to AD

AD 2008–04–11 allowed the use of later revisions of the airworthiness limitations. That provision has been removed from this AD. Allowing the use of ''a later revision'' of specific service documents violates Office of the Federal Register regulations for approving materials that are incorporated by reference. Affected operators, however, may request approval to use a later revision of the referenced service documents as an alternative method of compliance, under the provisions of paragraph (j) of this AD.

In addition, we have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

There are about 213 airplanes of the affected design in the worldwide fleet. This AD affects about 76 airplanes of U.S. registry. The required actions take about 8 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $48,640, or $640 per airplane.

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1209; Directorate Identifier 2009–NM–151–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any

personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15383 (73 FR 9666, February 22, 2008) and adding the following new AD:

2008–04–11 R1 The Boeing Company: Amendment 39–16147. Docket No. FAA–2009–1209; Directorate Identifier 2009–NM–151–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 12, 2010.

Affected ADs

(b) This AD revises AD 2008–04–11, Amendment 39–15383.

Applicability

(c) This AD applies to all The Boeing Company Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Restatement of Requirements of AD 2008–04–11, With Changes to Compliance Method

Service Information

(f) The term ''D6–7552–AWL March 2006,'' as used in this AD, means Boeing 707/720 Airworthiness Limitations (AWLs) Document D6–7552–AWL, dated March 2006.

Revision of AWLs Section

(g) Before December 16, 2008, revise the FAA-approved maintenance program by incorporating the information in the sections specified in paragraphs (g)(1) through (g)(3) of this AD, except that the initial inspection specified in paragraph (h) of this AD must be done at the time specified in paragraph (h).

(1) Section B., ''FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' of D6–7552–AWL March 2006.

(2) Section C., ''SYSTEM AWL PAGE FORMAT,'' of D6–7552–AWL March 2006.

(3) Section D., ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' of D6–7552–AWL March 2006.

Initial Inspection and Repair if Necessary

(h) At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD: Do a detailed inspection of external wires over the center fuel tank for damaged or loose clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank, in accordance with Section D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' AWL 28–AWL–01, of D6–7552–AWL March 2006. If any discrepancy is found during this inspection, repair the discrepancy before further flight in accordance with D6–7552–AWL March 2006. Accomplishing AWL 28–AWL–01 as part of an FAA-approved maintenance program prior to the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD constitutes compliance with the requirements of this paragraph.

(1) Before the accumulation of 36,000 total flight cycles, or within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(2) Within 72 months after March 28, 2008 (the effective date of AD 2008–04–11).

Note 2: 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.''

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

New Information

Explanation of CDCCL Requirements

Note 3: Notwithstanding any other maintenance or operational requirements, components that have been identified as

airworthy or installed on the affected airplanes before the revision of the FAA-approved maintenance program, as required by paragraph (g) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the FAA-approved maintenance program has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (SACO), 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: Thomas Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, SACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6508; fax (425) 917–6590. Or, e-mail information to *9–ANM-Seattle-ACO–AMOC-Requests@faa.gov.*

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

(3) AMOCs approved previously in accordance with AD 2008–04–11, Amendment 39–15383, are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(k) You must use Boeing 707/720 Airworthiness Limitations (AWLs) Document D6–7552–AWL, including attachment, dated March 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Boeing 707/720 Airworthiness Limitations (AWLs) Document D6–7552–AWL, including attachment, dated March 2006, on March 28, 2008 (73 FR 9666, February 22, 2008).

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

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

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

Issued in Renton, Washington, on December 16, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30564 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0987; Directorate Identifier 2009–CE–054–AD; Amendment 39–16143; AD 2009–26–08]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd Models N22B, N22S, and N24A Airplanes

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

ACTION: Final rule.

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

Late in 2002 the manufacturer advised CASA of another Nomad accident which was possibly caused by aileron flutter with the flaps at 38 degrees. This, along with the other flutter incidents, has resulted in the manufacturer issuing ANMD–57–18 Issue 1 as a precautionary measure while they further investigate the issue.

The manufacturer has now completed their investigation and issued Alert Service Bulletin ANMD–27–53 to modify flap actuation linkages to restore the necessary rigidity to the outboard flap, and hence the aileron. The unacceptable flexibility of the outboard flap mechanism allows flutter to occur in extreme circumstances.

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

DATES: This AD becomes effective February 1, 2010.

On February 1, 2010, the Director of the Federal Register approved the incorporation by reference of Nomad Alert Service Bulletin ANMD–27–53, dated February 20, 2008, listed in this AD.

As of November 8, 2006 (71 FR 61636, October 19, 2006), the Director of the Federal Register approved the incorporation by reference of Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006, listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, ACE–112, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090; *e-mail: doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 22, 2009 (74 FR 54498), and proposed to supersede AD 2006–21–12, Amendment 39–14797 (71 FR 61636, October 19, 2006). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Late in 2002 the manufacturer advised CASA of another Nomad accident which was possibly caused by aileron flutter with the flaps at 38 degrees. This, along with the other flutter incidents, has resulted in the manufacturer issuing ANMD–57–18 Issue 1 as a precautionary measure while they further investigate the issue.

The manufacturer has now completed their investigation and issued Alert Service Bulletin ANMD–27–53 to modify flap actuation linkages to restore the necessary rigidity to the outboard flap, and hence the aileron. The unacceptable flexibility of the outboard flap mechanism allows flutter to occur in extreme circumstances.

This amendment mandates Alert Service Bulletin ANMD–27–53, which requires modifications to the aircraft, but terminates the limitations imposed by earlier amendments.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 15 products of U.S. registry. We also estimate that it will take about 73 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $15,100 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $314,100, or $20,940 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14797 (71 FR 61636, October 19, 2006) and adding the following new AD:

2009–26–08 AeroSpace Technologies of Australia Pty Ltd: Amendment 39–16143; Docket No. FAA–2009–0987; Directorate Identifier 2009–CE–054–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 1, 2010.

Affected ADs

(b) This AD supersedes AD 2006–21–12, Amendment 39–14797.

Applicability

(c) This AD applies to Models N22B, N22S, and N24A airplanes, all serial numbers, including airplanes with float/amphibian configuration, certificated in any category.

Subject

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

Reason

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

Late in 2002 the manufacturer advised CASA of another Nomad accident which was possibly caused by aileron flutter with the flaps at 38 degrees. This, along with the other flutter incidents, has resulted in the manufacturer issuing ANMD–57–18 Issue 1 as a precautionary measure while they further investigate the issue.

The manufacturer has now completed their investigation and issued Alert Service Bulletin ANMD–27–53 to modify flap actuation linkages to restore the necessary rigidity to the outboard flap, and hence the aileron. The unacceptable flexibility of the outboard flap mechanism allows flutter to occur in extreme circumstances.

This amendment mandates Alert Service Bulletin ANMD–27–53, which requires modifications to the aircraft, but terminates the limitations imposed by earlier amendments.

Actions and Compliance

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

(1) Visually inspect the left-hand and right-hand ailerons for damage (i.e., distortion, bending, impact marks) and repair or replace any damaged aileron found following instructions obtained from the contact listed in paragraph (i)(3) of this AD within the following time:

(i) For Models N22B and N24A airplanes: Inspect within 50 hours time-in-service (TIS) after December 23, 2003 (the effective date retained from AD 2003–22–13).

(ii) For Model N22S airplanes: Inspect within the next 10 hours TIS after November 8, 2006 (the effective date retained from AD 2006–21–12), or within 30 days after November 8, 2006 (the effective date retained from AD 2006–21–12), whichever occurs first.

(iii) For all airplanes: Repair or replace before further flight after the inspection where damage is found.

(2) Adjust the engine power lever actuated landing gear ''up'' aural warning microswitches, perform a ground test, and if deficiencies are detected during the ground test, make the necessary adjustments following Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006, within the following time:

(i) For Models N22B and N24A airplanes: Within 50 hours TIS after December 23, 2003 (the effective date retained from AD 2003–22–13), unless already done following Nomad Alert Service Bulletin ANMD 57–18, dated December 19, 2002.

(ii) For Model N22S airplanes: Within the next 10 hours TIS after November 8, 2006 (the effective date retained from AD 2006–21–12), or within 30 days after November 8, 2006 (the effective date retained from AD 2006–21–12), whichever occurs first.

(3) For all airplanes: Do the following within the next 10 hours TIS after February 1, 2010 (the effective date of this AD) or

within 30 days after February 1, 2010 (the effective date of this AD), whichever occurs first:

(i) Incorporate the maximum flap extension limitations specified in paragraph 2.D. of Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006, into the Limitations section of the airplane flight manual (AFM). To show compliance with this paragraph of this AD, a copy of page 7 of Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006, may be inserted into the Limitations section of the AFM. You may take ''unless already done credit'' for this subparagraph if done in accordance with AD 2006–21–12 and no further action is required to comply with this subparagraph.

(ii) Fabricate (using at least 1/8-inch letters) and install placards on the instrument panel within the pilot's clear view as specified in paragraph 2.E. of Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006. You may take ''unless already done credit'' for this subparagraph if done in accordance with AD 2006–21–12 and no further action is required to comply with this subparagraph.

(iii) Incorporate the landing performance information specified in paragraph 2.F. of Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006, into the Limitations section and the Performance section of the AFM.

(4) For all airplanes: Modify the outboard forward flap linkage (Modification N953) and modify the outboard aft flap (aileron) mass balance following Nomad Alert Service Bulletin ANMD–27–53, dated February 20, 2008, within the next 12 months after February 1, 2010 (the effective date of this AD). Accomplishment of all of the actions specified in Nomad Alert Service Bulletin ANMD–27–53, dated February 20, 2008, terminates the limitations requirements and the placard requirements specified in paragraph (f)(3) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090; *e-mail: doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Civil Aviation Safety Authority of Australia, AD number AD/GAF–N22/69 Amdt 6, dated September 10, 2009; Nomad Alert Service Bulletin ANMD–27–53, dated February 20, 2008; and Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006, for related information.

Material Incorporated by Reference

(i) You must use Nomad Alert Service Bulletin ANMD–27–53, dated February 20, 2008, and Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Nomad Alert Service Bulletin ANMD–27–53, dated February 20, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On November 8, 2006 (71 FR 61636, October 19, 2006), the Director of the Federal Register previously approved the incorporation by reference of Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006.

(3) For service information identified in this AD, contact Customer Support Manager, Gippsland Aeronautics Pty Ltd., P.O. Box 881, MORWELL, Victoria, 3040, Australia; phone: +61 3 5172 1200; fax: +61 3 5172 1201; e-mail: *support@gippsaero.com.*

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

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

Issued in Kansas City, MO, on December 11, 2009.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30000 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0544; Directorate Identifier 2009–NE–17–AD; Amendment 39–16142; AD 2009–26–07]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 Turboshaft Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Turbomeca Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines. That AD currently requires initial and repetitive visual inspections of certain reduction gearboxes (module M05) for oil leakage, repair if leaking, and repair of all affected modules as optional terminating action to the repetitive inspections. This AD requires the same actions, but adds five more serial numbers of the reduction gearboxes (module M05) that are affected, and adds an alternative optional terminating action to the repetitive visual inspections. This AD results from Turbomeca identifying five additional reduction gearboxes (module M05) affected, and adding an alternative optional terminating action to the repetitive visual inspections. We are issuing this AD to prevent uncommanded in-flight engine shutdown, possible engine fire, and an emergency autorotation landing.

DATES: Effective January 12, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 12, 2010.

We must receive any comments on this AD by February 26, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* 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 Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15 for the service information identified in this AD.

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

SUPPLEMENTARY INFORMATION: On June 22, 2009, the FAA issued AD 2009–12–51, Amendment 39–15952 (74 FR 31167, June 30, 2009). That AD requires initial and repetitive visual inspections of certain reduction gearboxes (module M05) for oil leakage, repair if leaking, and repair of all affected modules as terminating action to the repetitive inspections. That AD was the result of reports of oil leaks from certain reduction gearbox (module M05) front casings. The engine manufacturer reported that the lubrication duct plug was not properly bonded/glued in place. That condition, if not corrected, could result in uncommanded in-flight engine shutdown, possible engine fire, and an emergency autorotation landing.

Actions Since AD 2009–12–51 Was Issued

Since AD 2009–12–51 was issued, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, recently notified us that an unsafe condition may exist on Turbomeca Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines. EASA advises that Turbomeca has added five more serial numbers of the reduction gearboxes (module M05) that are affected, and has also added an alternative optional terminating action to the repetitive visual inspections. This AD requires initial and repetitive visual inspections of certain reduction gearboxes (module M05) for oil leakage, repair if leaking, and repair of all affected modules as optional terminating action to the repetitive inspections. We are issuing this AD to prevent uncommanded in-flight engine shutdown, possible engine fire, and an emergency autorotation landing.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca S.A. Mandatory Service Bulletin (MSB) No. A292 72 0825, Version B, dated October 6, 2009, that describes procedures for visual inspections of affected reduction gearboxes (module M05) for oil leakage, repair if leaking, and repair of all affected modules as terminating action to the repetitive inspections.

EASA classified this service bulletin as mandatory and issued AD 2009–0245–E to ensure the airworthiness of these Turbomeca Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines in Europe.

Bilateral Airworthiness Agreement

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, EASA has kept the FAA informed of the situation described above. We have examined the findings of EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines of the same type design. We are issuing this AD to prevent uncommanded in-flight engine shutdown, possible engine fire, and an emergency autorotation landing. This AD requires initial and repetitive visual inspections of certain reduction gearboxes (module M05) for oil leakage, repair if leaking, and repair of all affected modules as terminating action to the repetitive inspections. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2009–0544; Directorate Identifier 2009–NE–17–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15952 (74 FR 31167, June 30, 2009), and by adding a new airworthiness directive, Amendment 39–16142, to read as follows:

2009–26–07 Turbomeca: Amendment 39–16142. Docket No. FAA–2009–0544; Directorate Identifier 2009–NE–17–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 12, 2010.

Affected ADs

(b) This AD supersedes AD 2009–12–51, Amendment 39–15952.

Applicability

(c) This AD applies to Turbomeca Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines if modified by Turbomeca Modification TU332 and fitted with a reduction gearbox (module M05) as listed by serial number in Figure 1 of Turbomeca Mandatory Service Bulletin (MSB) No. A292 72 0825, Version B, dated October 6, 2009. These engines are installed on, but not limited to, Eurocopter France AS350B, AS350BA, AS365N, AS350B1, AS350B2, Eurocopter Deutschland GmbH MBB–BK117–C1, Agusta A109K2, and Sikorsky S–76A+, S–76A++ and S–76C helicopters.

Unsafe Condition

(d) This AD results from Turbomeca identifying five additional reduction gearboxes (module M05) affected, and adding an alternative optional terminating action to the repetitive visual inspections. We are issuing this AD to prevent uncommanded in-flight engine shutdown, possible engine fire, and an emergency autorotation landing.

Compliance

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

Initial Visual Inspection Before Further Flight

(f) Before further flight:

(1) Visually inspect the reduction gearbox (module M05) lubrication duct for oil leakage. Use paragraph 1.C.(1)(a), paragraph 2.A., and Figure 2 of Turbomeca S.A. MSB No. A292 72 0825, Version B, dated October 6, 2009, to do the inspection.

(2) If oil leakage is found:

(i) Repair the reduction gearbox (module M05) lubrication duct by filling it with black CAF 33 elastomer. Use paragraphs 2.B.1 through 2.B.1.(a)*3* 3.2, Figure 3, and Figure 4 in Turbomeca S.A. MSB No. A292 72 0825, Version B, dated October 6, 2009, to do the repair; or

(ii) Repair the reduction gearbox (module M05) lubrication duct by installing a steel plug. Use paragraphs 2.B.1(b)*1* through 2.B.1(b)*7,* and Figure 5 in Turbomeca S.A. MSB No. A292 72 0825, Version B, dated October 6, 2009, to do the repair.

Repetitive Visual Inspections

(g) If no oil leakage is found, repeat the visual inspection every four flight hours, or after the last flight of each day, whichever comes first.

(h) The actions required by paragraph (g) of this AD may be performed by the owner/operator holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 and 14 CFR 91.417(a)(2)(v).

Optional Terminating Action

(i) As optional terminating action to the repetitive visual inspections in paragraph (g) of this AD, repair the affected reduction gearbox (module M05) as specified in paragraph (f)(2) of this AD.

Alternative Methods of Compliance

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

Related Information

(k) European Aviation Safety Agency emergency airworthiness directive 2009–0245–E, dated November 10, 2009, also addresses the subject of this AD.

Contact Information

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

Material Incorporated by Reference

(m) You must use Turbomeca Mandatory Service Bulletin No. A292 72 0825, Version B, dated October 6, 2009, to identify the serial numbers of reduction gearboxes (module M05) affected by this AD, and to perform the inspections and repairs required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Special Flight Permits

(n) Under 14 CFR part 39.23, special flight permits for this AD are prohibited.

Issued in Burlington, Massachusetts, on December 10, 2009.

Peter A. White,

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

[FR Doc. E9–29985 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29087; Directorate Identifier 2007–NM–094–AD; Amendment 39–16139; AD 2009–26–04]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This AD requires repetitive lubrication of the left and right main landing gear (MLG) forward trunnion pins; and an inspection for discrepancies of the transition radius, lead-in chamfer, and cross-bolt bore of the MLG forward trunnion pins, and repair or replacement if necessary. Doing the applicable inspections and repairs/replacements, or overhauling the trunnion pins ends the repetitive lubrication requirements of this AD. For airplanes on which a certain repair is done, this AD requires repetitive inspections for discrepancies of the transition radius. This AD results from a report that the protective finishes on the forward trunnion pins for the left and right MLG might have been damaged during final assembly. We are issuing this AD to prevent cracking of the forward trunnion pin, which could result in fracture of the pin and consequent collapse of the MLG.

DATES: This AD becomes effective February 1, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 1, 2010.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That supplemental NPRM was published in the **Federal Register** on August 5, 2009 (74 FR 38988). That supplemental NPRM proposed to require repetitive lubrication of the left and right main landing gear (MLG) forward trunnion pins; and an inspection for discrepancies of the transition radius, lead-in chamfer, and cross-bolt bore of the MLG forward trunnion pins, and repair or replacement if necessary. Doing the applicable inspections and repairs/replacements, or overhauling the trunnion pins, ends the repetitive lubrication requirements of the proposed AD. For airplanes on which a certain repair is done, the action proposed to require repetitive inspections for discrepancies of the transition radius.

Comments

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

Support for the Supplemental NPRM

One commenter, Boeing, concurs with the content of the supplemental NPRM.

Request for Added Language

Korean Air (KA) requests that we add some of the referenced service bulletin language to further clarify the proposed AD. KA requests that we add the phrase ''with MLG not removed (in situ)'' to paragraph (h), and ''transition radius, the lead-in chamfer and cross-bolt bore with MLG removed'' to paragraph (i), of the supplemental NPRM.

We partially agree. Adding language from Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008, can further clarify the actions in the AD. We have revised paragraph (h) of the AD to add ''with MLG not removed (in situ)'' as the commenter requests. We have also revised paragraph (i) of the AD to add ''with the MLG removed;'' however, reference to ''the lead-in chamfer and cross-bolt bore'' was already stated in paragraph (i) of the supplemental NPRM.

We do not agree, however, to add a reference to ''transition radius'' to paragraph (i) of the AD. Although paragraph (i) of the AD does not specify to inspect the transition radius of the trunnion pin with the pin removed, that inspection, along with other tasks, would be covered by the typical maintenance requirements for overhauling the MLG. We have not changed the AD in this regard.

Conclusion

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

Costs of Compliance

There are about 890 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Repetitive lubrication	2	$160 per lubrication cycle	300	$48,000 per lubrication cycle.
Inspections (in situ)	2	$160	300	$48,000.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII,

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–26–04 Boeing: Amendment 39–16139. Docket No. FAA–2007–29087; Directorate Identifier 2007–NM–094–AD.

Effective Date

(a) This AD becomes effective February 1, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008.

Subject

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

Unsafe Condition

(e) This AD results from a report that the protective finishes on the forward trunnion pins for the left and right main landing gear (MLG) might have been damaged during final assembly. We are issuing this AD to prevent cracking of the forward trunnion pin, which could result in fracture of the pin and consequent collapse of the MLG.

Compliance

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

Lubrication or Overhaul

(g) Within 30 days after the effective date of this AD: Lubricate the left and right MLG forward trunnion pins in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008. Repeat the lubrication at intervals not to exceed 30 days until all applicable requirements of paragraphs (h) and (i) of this AD have been accomplished. Overhauling the trunnion pin in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008, ends the repetitive lubrication requirements of this paragraph for that pin.

Inspection and Corrective Actions

(h) Within 60 months after the date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later: Do a detailed inspection for discrepancies (corrosion, finish damage, surface deformation, or scratches) of the transition radius of the left and right MLG trunnion pins with MLG not removed (in situ); and if any discrepancy is found, repair or replace the trunnion pin before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008. If the repair specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008, is done, within 24 months after doing the repair, do the detailed inspection of the transition radius, and do the inspection thereafter at intervals not to exceed 24 months until the trunnion pin is overhauled or replaced in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008.

(i) For airplanes on which the trunnion pin has not been replaced or overhauled: Within 120 months after the date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later, do a detailed inspection for discrepancies of the lead-in chamfer and cross-bolt bore with the MLG removed; and if any discrepancy is found, repair or replace the trunnion pin before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008.

No Report Required

(j) Although Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008, specifies to send inspection reports to the manufacturer, this AD does not include that requirement.

Credit for Actions Done Using Previous Issue of Service Information

(k) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–32–1376, dated May 12, 2005; or Boeing Service Bulletin 737–32–1376, Revision 1, dated March 19, 2007; are acceptable for compliance with the corresponding actions of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle–ACO–AMOC–Requests@faa.gov*.

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

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

Material Incorporated by Reference

(m) You must use Boeing Service Bulletin 737–32–1376, Revision 2, dated August 6, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on December 4, 2009.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29964 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1195; Directorate Identifier 2009–NM–152–AD; Amendment 39–16145; AD 2008–11–01 R1]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767–200, –300, –300F, and –400ER Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to certain Model 767–200, –300, –300F, and –400ER series airplanes. That AD currently requires revising the FAA-approved maintenance program to incorporate new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires an initial inspection to phase in certain repetitive AWL inspections, and repair if necessary. This AD clarifies the intended effect of the AD on spare and on-airplane fuel tank system components. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective January 12, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 12, 2010.

On June 25, 2008 (73 FR 29414, May 21, 2008), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD.

We must receive any comments on this AD by February 26, 2010.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The 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: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On May 8, 2008, we issued AD 2008–11–01, Amendment 39–15523 (73 FR 29414, May 21, 2008). That AD applied to certain Model 767–200, –300, –300F, and –400ER series airplanes. That AD required revising the FAA-approved maintenance program to incorporate new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also required an initial inspection to phase in certain repetitive AWL inspections, and repair if necessary. That AD resulted from a design review of the fuel tank systems. The actions specified in that AD are intended to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Actions Since AD Was Issued

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the FAA-approved maintenance program. But once the CDCCLs are incorporated into the FAA-approved maintenance program, future maintenance actions on components must be done in accordance with those CDCCLs.

Relevant Service Information

AD 2008–11–01 cites Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision April 2008. Since we issued that AD, Boeing has revised the referenced service information. We have reviewed Section 9 of the Boeing 767 MPD Document, D622T001–9, Revision May 2009. The changes included in Subsection D of Section 9 of the Boeing 767 MPD Document, D622T001–9, Revision May 2009, are for clarification only, and either Revision April 2008 or Revision May 2009 of the Boeing 767 MPD Document are acceptable. There are no changes to Subsection E of Section 9 in Revision May 2009 of the Boeing 767 MPD Document.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2008–11–01. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components. We have renumbered subsequent notes accordingly.

Explanation of Changes Made to This Proposed AD

We have revised this AD to identify the correct legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Explanation of Additional Changes to AD

AD 2008–11–01 allowed the use of alternate CDCCLs if they are part of a later revision of the Boeing 767 MPD Document, D622T001–9, Revision April 2008. That provision has been removed from this AD. Allowing the use of ''a later revision'' of specific service documents violates Office of the Federal Register regulations for approving materials that are incorporated by reference. Affected operators, however, may request approval to use an alternative CDCCL that is part of a later revision of the referenced service documents as an alternative method of compliance, under the provisions of paragraph (k) of this AD.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

There are about 824 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	8	None	$640	332	$212,480
Inspections	8	None	$640	332	$212,480

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1195; Directorate Identifier 2009–NM–152–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15523 (73 FR 29414, May 21, 2008) and adding the following new AD:

2008–11–01 R1 The Boeing Company: Amendment 39–16145. Docket No. FAA–2009–1195; Directorate Identifier 2009–NM–152–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 12, 2010.

Affected ADs

(b) This AD revises AD 2008–11–01, Amendment 39–15523.

Restatement of Requirements of AD 2008–11–01, With Revised Compliance Method

Applicability

(c) This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; with an original standard airworthiness certificate or original export certificate of airworthiness issued before April 22, 2006.

Note 1: Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after April 22, 2006, must already be in compliance with the airworthiness limitations specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

Note 2: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Service Information Reference

(f) The term ''Revision April 2008 of the MPD,'' as used in this AD, means Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision April 2008. The term ''Revision May 2009 of the MPD,'' as used in this AD, means Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document D622T001–9, Revision May 2009.

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program by incorporating the information in the subsections specified in paragraphs (g)(1) and (g)(2) of this AD; except that the initial inspections specified in Table 1 of this AD must be done at the compliance times specified in Table 1 of this AD; and except that the task interval for AWL No. 28–AWL–05 is 72 months.

(1) Subsection D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' of Revision April 2008 or Revision May 2009 of the MPD.

(2) Subsection E, ''PAGE FORMAT: FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' AWLs No. 28–AWL–01 through No. 28–AWL–26 inclusive, of Revision April 2008 or Revision May 2009 of the MPD. As an optional action, AWLs No. 28–AWL–27 and No. 28–AWL–28, as identified in Subsection E of Revision April 2008 or Revision May 2009 of the MPD, also may be incorporated into the FAA-approved maintenance program.

Initial Inspections and Repair if Necessary

(h) Do the inspections specified in Table 1 of this AD at the compliance time specified in Table 1 of this AD, and repair any discrepancy, in accordance with Subsection D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS,'' of Revision April 2008 or Revision May 2009 of the MPD. The repair must be done before further flight. Accomplishing the inspections identified in Table 1 of this AD as part of an FAA-approved maintenance program before the applicable compliance time specified in Table 1 of this AD constitutes compliance with the requirements of this paragraph.

Note 3: 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.''

Note 4: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

TABLE 1—INITIAL INSPECTIONS

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–AWL–01	A detailed inspection of external wires over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 72 months after June 25, 2008 (the effective date AD 2008–11–01).
28–AWL–05	A special detailed inspection of the bulkhead fitting bond for the hydraulic line tank penetration.	Within 72 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 60 months after June 25, 2008.
28–AWL–18	A special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indicating system to verify functional integrity.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 24 months after June 25, 2008.
28–AWL–26	A special detailed inspection of the lightning shield to ground termination on the out-of-tank surge tank fuel level sensor to verify functional integrity.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 24 months after June 25, 2008.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC, in accordance with the procedures specified in paragraph (k) of this AD.

Credit for Actions Done According to Previous Revisions of the MPD

(j) Actions done before June 25, 2008, in accordance with Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision March 2006; Revision October 2006; Revision January 2007; Revision October 2007; or Revision March 2008; are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

New Information

Explanation of CDCCL Requirements

Note 5: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the FAA-approved maintenance program, as required by paragraph (g) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the FAA-approved maintenance program has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle ACO, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) AMOCs approved previously in accordance with AD 2008–11–01, Amendment 39–15523, are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(l) You must use Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision April 2008; or Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision May 2009; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision May 2009, under 5 U.S.C. 552(a) and 1 CFR Part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision April 2008, on June 25, 2008 (73 FR 29414, May 21, 2008).

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

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

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

Issued in Renton, Washington, on December 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30420 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0543; Airspace Docket No. 09–ACE–9]

Amendment of Class D Airspace; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Spirit of St. Louis Airport, St. Louis, MO. 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, April 8, 2010. 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 October 20, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class D airspace for St. Louis, MO, reconfiguring controlled airspace at Spirit of St. Louis Airport, St. Louis, MO (74 FR 53681) Docket No. FAA–2009–0543. 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 D airspace designations are published in paragraph 5000 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 D 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 D airspace extending upward from the surface to and including 3,000 feet MSL to accommodate SIAPs at Spirit of St. Louis Airport, St. Louis, MO. This action is necessary for the safety and management of IFR operations at the 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 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:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

ACE MO D St. Louis, Spirit of St. Louis Airport, MO [Amended]

St. Louis, Spirit of St. Louis Airport, MO.
(Lat. 38°39′44″ N., long. 90°39′07″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.3-mile radius of Spirit of St. Louis Airport, and within 1 mile each side of the 258° bearing from the airport extending from the 4.3-mile radius to 4.6 miles west of the airport, excluding that airspace within the St. Louis, MO Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, Texas, on December 15, 2009.

Richard Farrell,

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

[FR Doc. E9–30269 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0696; Airspace Docket No. 09–AGL–18]

Amendment of Class E Airspace; West Branch, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at West Branch, MI, to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at West Branch Community Airport, West Branch, MI. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, April 8, 2010. 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 September 3, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for West Branch Community Airport, West Branch, MI (74 FR 45575) Docket No. FAA–2009–0696. 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 extending upward from 700 feet above the surface to accommodate SIAPs at West Branch Community Airport, West Branch, MI. This action is necessary for the safety and management of IFR operations at the 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 West Branch Community Airport, West Branch, MI.

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 MI E5 West Branch, MI [Amended]

West Branch Community Airport, MI
(Lat. 44°14′41″ N., long. 84°10′47″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of West Branch Community Airport and within 2.7 miles each side of the 086° bearing from the airport extending from the 7-mile radius to 11.4 miles east of the airport; and within 4 miles each side of the 269° bearing from the airport extending from the 7-mile radius to 11.5 miles west of the airport.

* * * * *

Issued in Fort Worth, Texas, on December 15, 2009.

Richard Farrell,

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

[FR Doc. E9–30273 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0801; Airspace Docket No. 09–ACE–11]

Amendment of Class E Airspace; Red Oak, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Red Oak, IA, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Red Oak Municipal Airport, Red Oak, IA. This action also updates the geographic coordinates of Red Oak Municipal Airport and the Red Oak non-directional beacon (NDB). The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Red Oak Municipal Airport.

DATES: Effective 0901 UTC, April 8, 2010. 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 September 22, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Red Oak, IA, reconfiguring controlled airspace at Red Oak Municipal Airport, Red Oak, IA (74 FR 48172) Docket No. FAA–2009–0801. 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 for the Red Oak, IA area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Red Oak Municipal Airport, Red Oak, IA. This action also updates the geographic coordinates of Red Oak Municipal Airport and the Red Oak NDB to coincide with the FAA's National Aeronautical Charting Office. This action is necessary for the safety and management of IFR operations at the 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 Red Oak Municipal Airport, Red Oak, IA.

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:

* * * * *

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

* * * * *

ACE IA E5 Red Oak, IA [Amended]

Red Oak Municipal Airport, IA
(Lat. 41°00′39″ N., long. 95°15′32″ W.)
Red Oak NDB, IA
(Lat. 41°00′55″ N., long. 95°15′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Red Oak Municipal Airport; and within 2 miles each side of the 354° bearing from the airport extending from the 6.4-mile radius to 11 miles north of the airport; and within 2.6 miles each side of the 326° bearing from the Red Oak NDB extending from the 6.4-mile radius to 8.3 miles northwest of the airport.

* * * * *

Issued in Fort Worth, Texas, on December 4, 2009.

Roger M. Trevino,

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

[FR Doc. E9–30192 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0631; Airspace Docket No. 09–ASW–19]

Establishment of Class E Airspace; Albany, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Albany, TX, to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Albany Municipal Airport, Albany, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, April 8, 2010. 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 October 14, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Albany Municipal Airport, Albany, TX (74 FR 52705) Docket No. FAA–2009–0631. 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 establishing Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Albany Municipal Airport, Albany, TX. This action is necessary for the safety and management of IFR operations at the 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 establishes controlled airspace at Albany Municipal Airport, Albany, TX.

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.

* * * * *

ASW TX E5 Albany, TX [New]

Albany Municipal Airport, TX
(Lat. 32°43′17″ N., long. 99°16′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Albany Municipal Airport, and within 4 miles each side of the 178° bearing from the airport extending from the 6.4-mile radius to 10.6 miles south of the airport, and within 4 miles each side of the 358° bearing from the airport extending from the 6.4-mile radius to 10.7 miles north of the airport.

* * * * *

Issued in Fort Worth, Texas, on December 8, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–30189 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30701 Amdt. No. 3352]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 28, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR

sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on December 11, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 14 JAN 2010

Muscle Shoals, AL, Northwest Alabama Rgnl, Takeoff Minimums and Obstacle DP, Orig
Wilmington, DE, New Castle, VOR RWY 1, Amdt 4
Wilmington, DE, New Castle, VOR OR GPS RWY 19, Amdt 4B, CANCELLED
Kansas City, MO, Kansas City Intl, RNAV (GPS) Y RWY 1R, Amdt 1A
Kansas City, MO, Kansas City Intl, RNAV (RNP) Z RWY 1R, Orig-A
Walnut Cove, NC, Meadow Brook Field, Takeoff Minimums and Obstacle DP, Amdt 1
Malone, NY, Malone-Dufort, VOR/DME–A, Amdt 1, CANCELLED
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, RNAV (GPS) RWY 22, Orig-A
Norfolk, VA, Hampton Roads Executive, NDB RWY 2, Amdt 7, CANCELLED

Effective 11 FEB 2010

Sylacauga, AL, Merkel Field Sylacauga Muni, RNAV (GPS) RWY 9, Amdt 1
Sylacauga, AL, Merkel Field Sylacauga Muni, RNAV (GPS) RWY 27, Amdt 1
Lake Village, AR, Lake Village Muni, GPS RWY 1, Orig-A, CANCELLED
Lake Village, AR, Lake Village Muni, GPS RWY 19, Orig, CANCELLED
Lake Village, AR, Lake Village Muni, RNAV (GPS) RWY 1, Orig
Lake Village, AR, Lake Village Muni, RNAV (GPS) RWY 19, Orig
Lake Village, AR, Lake Village Muni, Takeoff Minimums and Obstacle DP, Orig
West Memphis, AR, West Memphis Muni, GPS RWY 17, Orig-B, CANCELLED
West Memphis, AR, West Memphis Muni, GPS RWY 35, Orig-B, CANCELLED
West Memphis, AR, West Memphis Muni, RNAV (GPS) RWY 17, Orig
West Memphis, AR, West Memphis Muni, RNAV (GPS) RWY 35, Orig
Scottsdale, AZ, Scottsdale, Takeoff Minimums and Obstacle DP, Amdt 8
Little River, CA, Little River, LITTLE RIVER ONE Graphic Obstacle DP
Little River, CA, Little River, Takeoff Minimums and Obstacle DP, Orig
Van Nuys, CA, Van Nuys, Takeoff Minimums and Obstacle DP, Amdt 4
Grand Junction, CO, Grand Junction Rgnl, ILS OR LOC RWY 11, Amdt 16
Titusville, FL, Space Coast Rgnl, RNAV (GPS) RWY 36, Orig-A
Weno Island, FM, Chuuk Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Bainbridge, GA, Decatur Co Industrial Air Park, ILS OR LOC RWY 27, Orig
Cornelia, GA, Habersham County, Takeoff Minimums and Obstacle DP, Amdt 3
Forest City, IA, Forest City Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Boise, ID, Boise Air Terminal/Gowen Field, GOWEN ONE Graphic Obstacle DP
Boise, ID, Boise Air Terminal/Gowen Field, Takeoff Minimums and Obstacle DP, Amdt 6
Boise, ID, Boise Air Terminal/Gowen Field, VOR/DME OR TACAN RWY 28L, Amdt 2
Coeur D'Alene, ID, Coeur D'Alene-Pappy Boyington Field, COEUR D'ALENE ONE Graphic Obstacle DP
Coeur D'Alene, ID, Coeur D'Alene-Pappy Boyington Field, Takeoff Minimums and Obstacle DP, Amdt 9
Junction City, KS, Freeman Field, Takeoff Minimums and Obstacle DP, Amdt 2
Minneapolis, MN, Flying Cloud, COPTER ILS OR LOC RWY 10R, Amdt 1
Minneapolis, MN, Flying Cloud, ILS OR LOC RWY 10R, Amdt 3
Minneapolis, MN, Flying Cloud, VOR RWY 10R, Amdt 9
Minneapolis, MN, Flying Cloud, VOR RWY 36, Amdt 12, CANCELLED
Minneapolis, MN, Flying Cloud, VOR/DME RWY 36, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, CONVERGING ILS RWY 30R, Amdt 1
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, CONVERGING ILS RWY 35, Amdt 2
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, ILS OR LOC RWY 12L, ILS RWY 12L (CAT II), ILS RWY 12L (CAT III), Amdt 8
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, ILS OR LOC RWY 12R, ILS RWY 12R (CAT II), ILS RWY 12R (CAT III), Amdt 9
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, ILS OR LOC RWY 30R, Amdt 13
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, ILS OR LOC RWY 35, ILS RWY 35 (CAT II), ILS RWY 35 (CAT III), Amdt 2
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, LOC RWY 4, Amdt 1
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, LOC RWY 17, Amdt 1
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, LOC RWY 22, Amdt 1

Minneapolis, MN, Minneapolis-St Paul Intl/ Wold Chamberlain, RNAV (GPS) RWY 12L, Amdt 2
St. Paul, MN, St. Paul Downtown Holman Field, COPTER ILS OR LOC RWY 32, Orig-A, CANCELLED
St. Paul, MN, St. Paul Downtown Holman Field, ILS OR LOC RWY 14, Amdt 1
St. Paul, MN, St. Paul Downtown Holman Field, ILS OR LOC RWY 32, Amdt 5
Newark, NJ, Newark Liberty Intl, Takeoff Minimums and Obstacle DP, Amdt 5
Binghamton, NY, Greater Binghamton/Edwin A Link Field, RNAV (GPS) RWY 34, Amdt 1
Fremont, OH, Fremont, RNAV (GPS) RWY 9, Orig-A
Allendale, SC, Allendale County, Takeoff Minimums and Obstacle DP, Orig
Greer, SC, Greenville-Spartanburg Intl-Roger Milliken, Takeoff Minimums and Obstacle DP, Amdt 1
Dallas, TX, Collin County Rgnl at McKinney, VOR/DME–A, Amdt 1
Kanab, UT, Kanab Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Clintonville, WI, Clintonville Muni, RNAV (GPS) RWY 4, Amdt 1
Clintonville, WI, Clintonville Muni, RNAV (GPS) RWY 14, Amdt 1
Clintonville, WI, Clintonville Muni, RNAV (GPS) RWY 22, Amdt 1
Clintonville, WI, Clintonville Muni, RNAV (GPS) RWY 32, Amdt 1
Bluefield, WV, Mercer County, ILS OR LOC RWY 23, Amdt 15
Bluefield, WV, Mercer County, RNAV (GPS) RWY 5, Orig
Bluefield, WV, Mercer County, RNAV (GPS) RWY 23, Orig
Bluefield, WV, Mercer County, VOR RWY 23, Amdt 9
Bluefield, WV, Mercer County, VOR/DME RWY 23, Amdt 5
Torrington, WY, Torrington Muni, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. E9–30177 Filed 12–24–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30702; Amdt. No. 3353]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 28, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (*Mail Address:* P.O. Box 25082 Oklahoma City, OK. 73125) *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on 11 December 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
14–Jan–10	GA	WINDER	BARROW COUNTY	9/1655	11/25/09	VOR/DME OR GPS A, AMDT 9C.
14–Jan–10	NY	SENECA FALLS	FINGER LAKES RGNL	9/1671	11/27/09	RNAV (GPS) RWY 1, AMDT 2.
14–Jan–10	NC	ANDREWS	ANDREWS-MURPHY	9/1672	11/25/09	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 1.
14–Jan–10	TX	LONGVIEW	EAST TEXAS RGNL	9/1756	12/1/09	VOR A, ORIG.
14–Jan–10	TX	LONGVIEW	EAST TEXAS RGNL	9/1757	12/1/09	VOR/DME OR TACAN RWY 31, AMDT 7.
14–Jan–10	FL	BARTOW	BARTOW MUNI	9/1892	11/25/09	RNAV (GPS) RWY 23, ORIG–A.
14–Jan–10	FL	BARTOW	BARTOW MUNI	9/1893	11/25/09	VOR/DME RWY 9L, AMDT 2B.
14–Jan–10	FL	BARTOW	BARTOW MUNI	9/1894	11/25/09	RNAV (GPS) RWY 5, ORIG–A.
14–Jan–10	FL	BARTOW	BARTOW MUNI	9/1895	11/25/09	RNAV (GPS) RWY 27R, AMDT 1.
14–Jan–10	FL	BARTOW	BARTOW MUNI	9/1896	11/25/09	RNAV (GPS) RWY 9L, AMDT 1A.
14–Jan–10	KS	ULYSSES	ULYSSES	9/3753	12/8/09	TAKEOFF MINIMUMS AND OBSTACLE DP, AMDT 2.
11–Feb–10	PA	HARRISBURG	HARRISBURG INTL	9/1403	11/19/09	VOR RWY 31, AMDT 2. ILS RWY 4R, AMDT 12A; ILS.
11–Feb–10	NJ	NEWARK	NEWARK LIBERTY INTL	9/2459	12/1/09	RWY 4R (CAT II), AMDT 12A; ILS. RWY 4R (CAT III), AMDT 12A.
11–Feb–10	NJ	NEWARK	NEWARK LIBERTY INTL	9/2463	12/1/09	ILS OR LOC RWY 11, AMDT 1A.
11–Feb–10	NJ	NEWARK	NEWARK LIBERTY INTL	9/2464	12/1/09	ILS RWL 4L, AMDT 13.
11–Feb–10	NJ	NEWARK	NEWARK LIBERTY INTL	9/2465	12/1/09	RNAV (GPS) RWY 22R, AMDT 1.
11–Feb–10	NJ	NEWARK	NEWARK LIBERTY INTL	9/2466	12/1/09	RNAV (GPS) Y RWY 4R, AMDT 1A.
11–Feb–10	NJ	NEWARK	NEWARK LIBERTY INTL	9/2467	12/1/09	ILS OR LOC RWY 22R, AMDT 4A.
11–Feb–10	NJ	NEWARK	NEWARK LIBERTY INTL	9/2468	12/1/09	RNAV (GPS) RWY 4L, AMDT 1.
11–Feb–10	NJ	NEWARK	NEWARK LIBERTY INTL	9/2469	12/1/09	RNAV (GPS) RWY 11, ORIG–A.
11–Feb–10	NJ	NEWARK	NEWARK LIBERTY INTL	9/2470	12/1/09	RNAV (GPS) Z RWY 22L, AMDT 1B.
11–Feb–10	NJ	TETERBORO	TETERBORO	9/2482	12/1/09	ILS OR LOC RWY 6, AMDT 29B.
11–Feb–10	NJ	TETERBORO	TETERBORO	9/2484	12/1/09	COPTER ILS RWY 6, AMDT 1C.
11–Feb–10	OR	PORTLAND	PORTLAND INTL	9/3389	12/7/09	ILS OR LOC RWY 10R, AMDT 32A; ILS RWY 10R (CAT II), AMDT 32A; ILS RWY 10R (CAT III), AMDT 32A.

[FR Doc. E9–30178 Filed 12–24–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 366 and 367

[Docket No. RM09–21–000; Order No. 731]

Revised Filing Requirements for Centralized Service Companies Under the Public Utility Holding Company Act of 2005, the Federal Power Act, and the Natural Gas Act

Issued December 17, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising its regulations to require every centralized service company that provides non-power services to any public utility, natural gas company, or both, to file Form No. 60 (Annual Report of Centralized Service Companies) annually and abide by the Uniform System of Accounts, unless exempted or granted a waiver. This rule provides greater transparency and will aid the Commission in fulfilling its regulatory obligations under the Federal Power Act and the Natural Gas Act to ensure that rates are just and reasonable.

DATES: *Effective Date:* This rule will become effective January 27, 2010.

FOR FURTHER INFORMATION CONTACT:
Thomas Russo (Technical Information), Division of Financial Regulation, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,Telephone (202) 502–8792.
Lawrence Greenfield (Legal Information), Office of the General Counsel—Energy Markets,Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone (202) 502–6415.
Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:
Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

Order No. 731

Final Rule

Issued December 17, 2009.

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I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is revising its regulations at 18 CFR 366.1, 366.23, 367.1 and 367.2 to require every centralized service company that provides non-power services to any public utility, natural gas company, or both, to file Form No. 60 (Annual Report of Centralized Service Companies) annually and abide by the Uniform System of Accounts, unless exempted or granted a waiver pursuant to 18 CFR 366.3 or 366.4.[1]

2. The Commission believes that these revisions promote transparency and are consistent with the Commission's regulatory obligation to regulate public utilities under the Federal Power Act (FPA)[2] and natural gas companies under the Natural Gas Act (NGA)[3] to ensure that rates are just and reasonable. The revisions also better track the Commission's intent in prior orders directing the filing of Form No. 60.

II. Background

3. On September 17, 2009, the Commission issued a notice of proposed rulemaking proposing to revise 18 CFR 366.1 and 18 CFR 367.1 to clarify that ''service companies'' includes entities providing non-power goods or services to any public utility or any natural gas company, or both, in the same holding company system, and to revise 18 CFR 366.23 and 18 CFR 367.2 to clarify that every centralized service company that provides non-power services to a public utility, a natural gas company, or both, in the same holding company system, must file FERC Form No. 60 (Annual Report of Centralized Service Companies) annually and must abide by the Uniform System of Accounts, unless the holding company is exempted or granted a waiver pursuant to 18 CFR 366.3 or 366.4.[4]

4. In the Form 60 Notice, the Commission explained that the Commission intended in Order Nos. 667, 667–A, and 684,[5] to require every centralized service company that provides non-power services to a public utility, a natural gas company, or both, to file Form No. 60 (Annual Report of Centralized Service Companies) annually, unless the holding company is exempted or granted a waiver pursuant to 18 CFR 366.3 or 366.4.

5. However, as explained in the Form 60 Notice, the codification of this requirement in the regulatory text did not make this requirement clear. Thus, in the Form 60 Notice, the Commission proposed new language that would more clearly express this requirement.

[1] We are not adopting any revisions to the regulatory text of 18 CFR part 368 or 18 CFR 369.1, because the current text of those regulations already is consistent with this Final Rule.

[2] 16 U.S.C. 791a *et seq.*

[3] 15 U.S.C. 717 *et seq.*

[4] *Revised Filing Requirements for Centralized Service Companies Under the Public Utility Holding Company Act of 2005, the Federal Power Act, and the Natural Gas Act,* Notice of Proposed Rulemaking, 74 FR 48884 (Sep. 25, 2009), FERC Stats. & Regs. ¶ 32,647 (2009) (Form 60 Notice).

[5] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g,* Order No. 667–A, FERC Stats. & Regs. ¶ 31,213 (2006), *order on reh'g,* Order No. 667–B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g,* Order No. 667–C, 118 FERC ¶ 61,133 (2007); *Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005,* Order No. 684, FERC Stats. & Regs. ¶ 31,229 (2006).

6. In response to the Form 60 Notice, comments were filed by the American Public Gas Association (APGA). These comments, more specifically addressed below, support the Commission's proposals in the Form 60 Notice.

III. Discussion

7. It was our intention in Order Nos. 667, 667–A and 684 that every centralized service company providing non-power services either to any public utility or to any natural gas company (or to both) in the same holding company system file Form No. 60 and comply with the Uniform System of Accounts, unless the holding company is exempted or granted a waiver. However, as explained in the Form 60 Notice, it has recently come to our attention that, as currently written, the regulatory text of 18 CFR 366.1, 366.23, 367.1 and 367.2 could be read to reach a different, unintended conclusion. Namely, that centralized service companies providing non-power services to natural gas companies would be excluded from the requirement to file Form No. 60 if the companies that were part of the holding company system did not include a public utility. The proposed revisions to 18 CFR 366.1, 18 CFR 366.23, 18 CFR 367.1 and 18 CFR 367.2 described in the Form 60 Notice were all designed to close this inadvertent loophole.[6]

A. Comments

8. APGA supports the Commission's proposals in the Form 60 Notice. APGA argues both that the proposed regulations are consistent with the Commission's expressed intention as to the scope of the filing requirement and that ''centralized service companies that provide services to natural gas companies or both natural gas companies and public utilities warrant the same treatment as centralized service companies that provide services to just public utilities. In APGA's view, this is because the same concerns regarding transparency (and effective rate regulation) persist among both natural gas companies and public utilities.''[7] Thus, APGA supports revisions to the Commission's regulations to make the requirement to file Form No. 60 clearer and adds that the ''Commission's proposal is consistent with its obligation to ensure just and reasonable rates for public utilities under the FPA and for natural gas companies under the NGA.''[8] Finally, APGA states that the Commission possesses the authority to require centralized service companies to file FERC Form No. 60, pursuant to the FPA and NGA, respectively, in addition to its authority under PUHCA 2005.[9]

B. Analysis

9. Based on the analysis contained in the Form 60 Notice and after consideration of the comments filed in response to the Form 60 Notice, we are revising our regulations to clarify that the FERC Form No. 60 annual filing requirement, as well as the requirement to abide by the Uniform System of Accounts, extends to any centralized service company that provides non-power services to any public utility or any natural gas company, or both, in the same holding company system, so that the filing requirements will now expressly apply to all the entities that the Commission envisioned covering in its earlier orders, (*i.e.,* the centralized service companies that serve public utilities and natural gas companies subject to the Commission's jurisdiction under the FPA and NGA).

10. Therefore, in this Final Rule, the Commission is revising 18 CFR 366.1 and 18 CFR 367.1 to clarify that ''service companies'' include entities providing non-power goods or services to any public utility or any natural gas company, or both, in the same holding company system, and to revise 18 CFR 366.23 and 18 CFR 367.2 to clarify that every centralized service company that provides non-power services to a public utility, a natural gas company, or both, in the same holding company system, must file FERC Form No. 60 (Annual Report of Centralized Service Companies) annually and must abide by the Uniform System of Accounts, unless the holding company is exempted or granted a waiver pursuant to 18 CFR 366.3 or 366.4.

11. The Commission finds that these revisions will promote transparency and are consistent with the Commission's regulatory obligation to regulate public utilities under the FPA and natural gas companies under the NGA to ensure just and reasonable rates. The revisions also better track the Commission's intent in prior orders directing the filing of FERC Form No. 60.[10]

12. In contrast to Order Nos. 667, 667–A and 684, in this rulemaking the Commission is relying explicitly on the Commission's authority under the FPA and NGA, in addition to its authority under PUHCA 2005. Accordingly, in this Final Rule, we are also revising the name of subchapter U, and of parts 366 and 367, title 18, CFR, to better reflect the Commission's reliance on its statutory authority under the FPA and NGA, in addition to its authority under PUHCA 2005.

C. Filing Date

13. As this Final Rule merely clarifies existing filing obligations that are already in place, we will require centralized service companies that are subject to this Final Rule to file Form No. 60 by May 1, 2010.

IV. Information Collection Statement

14. Office of Management and Budget (OMB) regulations require OMB to review and approve certain information collection requirements imposed by agency rule.[11] The Commission is submitting notification of the information collection requirements contained in this Final Rule to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[12]

15. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

16. This Final Rule clarifies that the requirement to file FERC Form No. 60 as it currently exists applies to centralized service companies in holding company systems that include a natural gas company (where there is not also a public utility); in holding company systems that include a public utility, these requirements already apply. Likewise, this Final Rule clarifies that the Uniform System of Accounts as it currently exists applies to centralized service companies in holding company systems that include a natural gas company (where there is not also a public utility); in holding company systems that include a public utility, these requirements already apply. Finally, this Final Rule revises the

[6] *See* Form 60 Notice, FERC Stats. & Regs. ¶ 32,647 at P 12–17; *accord id.* P 4–11. We note, however, that, irrespective of the revisions we are adopting in this Final Rule, under 18 CFR 366.23(a)(2), any service company in a holding company system that does not file Form No. 60 is required to file a narrative description of the company's functions during the prior calendar year (Form No. 61) absent an exemption or waiver.

[7] APGA Comments at 2–3.

[8] *Id.* at 3.

[9] *Id.*

[10] *See* Form 60 Notice, FERC Stats. & Regs. ¶ 32,647 at P 12–17.

[11] 5 CFR 1320.11.

[12] 44 U.S.C. 3507(d).

definitions in 18 CFR parts 366 and 367 to match the requirements we are implementing in this Final Rule.

17. Since most holding companies include only public utilities or include both public utilities and natural gas companies and so would already be subject to these requirements, we expect that this clarification will have an impact on only a relatively small number of companies. Implementation of this Final Rule is necessary to provide greater transparency and will aid the Commission in fulfilling its regulatory obligation under the FPA and the NGA to ensure that rates are just and reasonable.

18. In the Form 60 Notice, the Commission explained that, when the Commission issued Order Nos. 667, 667–A and 684, it did not intend to exclude centralized service companies providing non-power services to holding companies that included natural gas companies (but no public utilities) from the requirement to file Form No. 60 or to abide by the Uniform System of Accounts. Thus, the Commission continues to rely on the estimate made in Order No. 684 of the burden associated with the annual filing of Form No. 60 (2,850 hours and $342,000).[13]

19. Moreover, in response to the Form 60 Notice, the sole comment filed supported the Form 60 Notice proposals and did not raise any concerns as to the reporting burden. Therefore, the Commission will use the same estimate in this Final Rule.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total No. of hours
FERC Form No. 60	38	1	75	2,850

Information Collection Costs: 2,850 hours at $120/hour = $342,000.

Title: FERC Form No. 60, Annual Report of Centralized Service Companies.

Action: Proposed collections.

OMB Control No.: 1902–0215.

Respondents: Business or other for profit, Interstate natural gas pipelines and public utilities (not applicable to small businesses).

Frequency of Responses: Annually.

20. *Necessity of Information:* This Final Rule explicitly requires, absent an exemption or waiver, any centralized service company providing non-power services to any natural gas company or any public utility, or both, to file FERC Form No. 60 annually and to comply with the Uniform System of Accounts. This information is needed to promote transparency and to allow the Commission to determine whether rates of natural gas pipelines and public utilities are just and reasonable.

21. Implementation of these requirements will help the Commission carry out its responsibilities under the FPA, NGA, and PUHCA 2005 to ensure that public utilities and natural gas companies do not engage in improper pricing and undue discrimination. The information collection requirements of this Final Rule will be reported to the Commission and posted on the Commission's Web site.

Internal Review: The Commission has reviewed the reporting and accounting requirements proposed in this Final Rule. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline and electric power industries, and are necessary to meet the Commission's obligations under PUHCA, the FPA, and the NGA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

22. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [*Attention:* Michael Miller, Office of the Chief Information Officer, *Phone:* (202) 502–8415, fax: (202) 273–0873, *e-mail: michael.miller@ferc.gov*].

23. Comments concerning the collection of information and the associated burden estimate, should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, *fax:* (202) 395–7285].

V. Environmental Analysis

24. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[14] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[15] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, for accounting-related matters, and for rate-related matters.[16] Therefore, no environmental assessment is necessary.

VI. Regulatory Flexibility Act Certification

25. The Regulatory Flexibility Act of 1980 (RFA)[17] generally requires a description and analysis of rulemakings that will have a significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on holding companies of public utilities and natural gas pipelines, the majority of which are not small businesses, and thus the regulations proposed here will not have a significant economic impact on a substantial number of small entities. These requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, the Commission hereby certifies that the regulations proposed here will not have a significant adverse impact on a substantial number of small entities.

VII. Document Availability

26. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this

[13] *See* Order No. 684, FERC Stats. & Regs. ¶ 31,229, at P 226; *see also* Form 60 Notice, FERC Stats. & Regs. ¶ 32,647 at P 20.

[14] *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[15] 18 CFR 380.4.

[16] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(15), 380.4(a)(16), 380.4(a)(25); *accord id.* 380.4(a)(27).

[17] 5 U.S.C. 601–12.

document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

27. From the Commission's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available in eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

28. User assistance is available for eLibrary and the Commission's Web site during the Commission's normal business hours. For assistance, contact FERC Online Support by e-mail at *FERCOnlineSupport@ferc.gov*, or by telephone at 202–502–6652 (toll-free at (866) 208–3676) or for TTY, contact (202) 502–8659.

List of Subjects

18 CFR Part 366

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 367

Electric power, Natural gas, Uniform System of Accounts, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends parts 366 and 367, subchapter U, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

■ 1. The title of Subchapter U is revised to read as follows:

SUBCHAPTER U—REGULATIONS UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 2005, FEDERAL POWER ACT AND NATURAL GAS ACT

■ 2. The title of part 366 is revised to read as follows:

PART 366—BOOKS AND RECORDS

■ 3. The authority citation for part 366 is revised to read as follows:

Authority: 15 U.S.C. 717 *et seq.*, 16 U.S.C. 791a *et seq.*, and 42 U.S.C. 16451–16463.

■ 4. The heading of Subpart A is revised to read as follows:

Subpart A—Definitions and Provisions Under PUHCA 2005, the Federal Power Act and the Natural Gas Act

■ 5. In § 366.1, the definition of ''service company'' is revised to read as follows:

§ 366.1 Definitions.

* * * * *

Service company. The term ''service company'' means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility or any natural gas company, or both, in the same holding company system.

* * * * *

■ 6. The heading of Subpart B is revised to read as follows:

Subpart B—Accounting and Recordkeeping Under PUHCA 2005, the Federal Power Act and the Natural Gas Act

■ 7. In § 366.23, paragraph (a)(1) is revised to read as follows:

§ 366.23 FERC Form No. 60, Annual reports of centralized service companies, and FERC–61, Narrative description of service company functions.

(a) *General.* (1) *FERC Form No. 60.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every centralized service company (*see* § 367.2 of this chapter) in a holding company system, regardless of whether that service company is providing services to a public utility, a natural gas company, or both, must file an annual report, FERC Form No. 60, as provided in § 369.1 of this chapter. Every report must be submitted on the FERC Form No. 60 then in effect and must be prepared in accordance with the instructions incorporated in that form.

* * * * *

■ 8. The heading of part 367 is revised to read as follows:

PART 367—UNIFORM SYSTEM OF ACCOUNTS FOR CENTRALIZED SERVICE COMPANIES SUBJECT TO THE PROVISIONS OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 2005, FEDERAL POWER ACT AND NATURAL GAS ACT

■ 9. The authority citation for part 367 is revised to read as follows:

Authority: 15 U.S.C. 717 *et seq.,* 16 U.S.C. 791a *et seq.,* and 42 U.S.C. 16451–16463.

■ 10. In § 367.1, paragraph (a)(45) is revised to read as follows:

§ 367.1 Definitions.

(a) * * *

(45) *Service company* means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility or any natural gas company, or both, in the same holding company system.

* * * * *

■ 11. In § 367.2, paragraph (a) is revised to read as follows:

§ 367.2 Companies for which this system of accounts is prescribed.

(a) Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4 of this chapter, this Uniform System of Accounts applies to any centralized service company operating, or organized specifically to operate, within a holding company system for the purpose of providing non-power services to any public utility or any natural gas company, or both, in the same holding company system.

* * * * *

[FR Doc. E9–30449 Filed 12–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 529

[Docket No. FDA–2009–N–0665]

New Animal Drugs; Change of Sponsor; Isoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an abbreviated new animal drug application (ANADA) for isoflurane, USP, from Nicholas Piramal India Ltd. UK, to Piramal Healthcare Ltd.

DATES: This rule is effective December 28, 2009.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Nicholas Piramal India Ltd. UK has informed FDA that it has transferred ownership of, and all rights and interest in, ANADA 200–237 for Isoflurane, USP, to Piramal Healthcare Ltd., Piramal Tower, Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400 013, India. Accordingly, the regulations are amended in 21 CFR

529.1186 to reflect this change of sponsorship.

Following this change of sponsorship, Nicholas Piramal India Ltd. UK is no longer the sponsor of an approved application. In addition, Piramal Healthcare Ltd. is not currently listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for Nicholas Piramal India Ltd. UK to add entries for Piramal Healthcare Ltd.

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

List of Subjects

21 CFR Part 510

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

21 CFR Part 529

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

■ 2. In § 510.600, in the table in paragraph (c)(1) alphabetically add an entry for ''Piramal Healthcare Ltd.'' and remove the entry for ''Nicholas Piramal India Ltd. UK''; and in the table in paragraph (c)(2) remove the entry for ''066112'' and numerically add an entry for ''065085'' to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Piramal Healthcare Ltd., Piramal Tower, Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400 013, India	065085
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
065085	Piramal Healthcare Ltd., Piramal Tower, Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400 013, India
* * * * *	

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 529 continues to read as follows:

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

§ 529.1186 [Amended]

■ 4. In § 529.1186, in paragraph (b), remove ''066112'' and in its place add ''065085''.

Dated: December 17, 2009.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E9–30590 Filed 12–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9476]

RIN 1545–BI62; RIN 1545–BG39

Apportionment of Tax Items Among the Members of a Controlled Group of Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance to corporations that are component members of a controlled group of corporations and to consolidated groups filing life-nonlife Federal income tax returns. They provide guidance to component members regarding the apportionment of tax benefit items and the amount and type of information they are required to submit with their returns.

DATES: *Effective Date:* These regulations are effective on *December 28, 2009.*

Applicability Date: For dates of applicability, see §§ 1.1502–43(e), 1.1502–47(t), 1.1561–1(d), 1.1561–2(f) and 1.1561–3(d). In accordance with section 7805(b)(1), respective portions of this Treasury decision are applicable to consolidated Federal income tax returns due on or after December 21, 2009 or to taxable years beginning on or after December 21, 2009, as the case may be.

FOR FURTHER INFORMATION CONTACT: Grid Glyer, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATON:

Background

On December 22, 2006, the IRS and the Treasury Department published several temporary regulations, including temporary regulations under sections 1502 and 1561. See TD 9304 (71 FR 76904), 2007–1 CB 423. Also on December 22, 2006, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations. See REG–161919–05 (71 FR 76955), 2007–1 CB 463. For administrative reasons, these regulations were relocated in REG–113688–09. See TD 9451 (74 FR 25147), 2009–23 IRB 1060.

On December 26, 2007, the IRS and the Treasury Department published several temporary regulations, including an additional temporary regulation under section 1561. See TD 9369 (72 FR 72929), 2008–6 IRB 394. Also on December 26, 2007, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations. See REG–104713–07 (72 FR 72970), 2008–6 IRB 409.

Explanation of Provisions

This Treasury decision adopts the proposed regulations (§§ 1.1502–43, 1.1502–47, 1.1561–0, 1.1561–1, 1.1561–2 and 1.1561–3) with no substantive changes. However, this Treasury decision makes clarifying changes to §§ 1.1561–2 and 1.1561–3. These changes are discussed in the following portion of this preamble.

1. *Only the Positive Taxable Income or Positive Alternative Minimum Taxable Income of the Component Members of a Controlled Group of Corporations Shall Be Combined for Purposes of Determining the Amount of*

the Additional Tax Imposed by Section 11(b)(1) and the Reduction in the Alternative Minimum Tax Exemption Amount Under Section 55(d)(3), Respectively.

Section 1561(a) provides that in computing the amount of additional tax imposed by section 11(b)(1) (the additional tax), and the phase-out of the alternative minimum tax exemption amount under section 55(d)(3) (the exemption amount), the component members of a controlled group of corporations (as defined in section 1563) shall, as a first step, combine their taxable incomes (or alternative minimum taxable incomes) for their tax years that include the same December 31st date. This taxable income (or alternative minimum taxable income) is for the entire tax year of a component member, even if it was not a member of the group for each day of that tax year. In the case of the determination of the additional tax, the calculation is limited to the taxable incomes of those component members to which any part of the tax bracket amounts are apportioned.

The question has arisen whether a component member that incurs a loss for a tax year may apply that loss to reduce the amount of the combined taxable income (or combined alternative minimum taxable income) of the controlled group for purposes of determining the amount of the additional tax or the reduction in the exemption amount, respectively. This Treasury decision clarifies that, for these purposes, only the positive taxable incomes (or positive alternative minimum taxable incomes) of those component members can be combined.

Only if the members of an affiliated group of corporations, as defined in section 1504, elect to file a consolidated return, as defined in section 1502, may these members offset their income and losses in determining their consolidated Federal income tax liability. See, for example, *Woolford Realty Co.* v. *Rose,* 286 U.S. 319 (1932). Since the members of a controlled group have not elected to file a consolidated return (even if such controlled group meets the section 1504 definition of an affiliated group), they may not offset their income and losses in determining their combined Federal income tax liability. Hence, they cannot offset such income and losses to determine their combined additional tax liability or their combined alternative minimum taxable income for purposes of determining the reduction in the exemption amount.

2. *A Component Member That Has a Short Taxable Year That Does Not Include a December 31st Date Calculates Its Additional Tax and Alternative Minimum Tax Liability on Just Its Own Income.*

Section 1561(b) and § 1.1561–2(e) provide rules for apportioning the tax bracket amounts and accumulated earnings credit to a member with a short taxable year that does not include a December 31st date (a short-year member). However, § 1.1561–2(e) does not provide guidance to a short-year member for determining its additional tax liability. This Treasury decision clarifies that such a member determines its additional tax liability on its own income for such short taxable year. Further, such income is not combined with the taxable incomes of the other component members of the same controlled group for purposes of determining the additional tax liability of such other component members.

In addition, for purposes of a short-year member determining its alternative minimum tax liability, this Treasury decision includes a reference to section 443(d). Section 443(d) provides that if a taxpayer has a return of less than 12 months (whether or not the tax year of that taxpayer includes a December 31st date), its alternative minimum tax liability is determined on an annualized basis.

3. *Clarification of the Rules Under Which an Apportionment Plan Is Terminated.*

Section 1.1561–3(c)(3) provides the circumstances under which an apportionment plan is terminated. Paragraphs (iii) and (iv) of § 1.1561–3(c)(3) of the proposed regulations provided:

(iii) Any corporation which was a component member of such group on the particular December 31 is not a component member of such group on such succeeding December 31; or

(iv) Any corporation which was not a component member of such group on the particular December 31 is a component member of such group on such succeeding December 31.

It is often not feasible for the members of a controlled group to know for the current tax year whether a corporation will or will not be a component member of such group for the succeeding tax year. Accordingly, this Treasury decision clarifies these paragraphs by rewriting them to refer to the previous tax year and the current tax year, instead of the succeeding tax year. In addition, this Treasury decision clarifies that the fact that a corporation is joining or leaving a consolidated group, when such consolidated group is treated collectively as constituting one component member of the controlled group, will not serve to affect the ongoing status of such controlled group, provided that, after that corporation has either left or joined such consolidated group, such consolidated group remains in existence within the meaning of § 1.1502–75(d).

The IRS and the Treasury Department received no written or electronic comments from the public in response to the notice of proposed rulemaking and no public hearing was requested or held.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Grid Glyer, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order and removing the entries for §§ 1.1502–43T and 1.1561–2T to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–43 also issued under 26 U.S.C. 1502. * * *

Section 1.1561–2 also issued under 26 U.S.C. 1561. * * *

§ 1.924(a)–1T [Amended]

■ **Par. 2.** Section 1.924(a)–1T (j)(2)(i), fifth sentence, is amended by removing the language ''§ 1.1561–3T'' and adding ''§ 1.1561–3'' in its place.

■ **Par. 3.** Section 1.924(a)–1T (j)(2)(i), sixth sentence, is amended by removing

the language ''§ 1.1561–3T(a)'' and adding ''§ 1.1561–3'' in its place.

■ **Par. 4.** Section 1.1502–43 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.1502–43 Consolidated accumulated earnings tax.

* * * * *

(d) *Consolidated accumulated earnings credit*—(1) *In general.* [Reserved]

(2) *Special rule if a consolidated group is part of a controlled group.* If a consolidated group is treated collectively as being one component member of a controlled group, or if each member of a consolidated group is treated as being a separate component member of a controlled group, see section 1561 for determining the portion of the accumulated earnings credit to be allocated to such group or to such members.

(e) *Effective/applicability date.* This section applies to any consolidated Federal income tax return due (without extensions) on or after December 21, 2009. However, a consolidated group may apply this section to any consolidated Federal income tax return filed on or after December 21, 2009. For returns due before December 21, 2009, see § 1.1502–43T as contained in 26 CFR part 1 in effect on April 1, 2009.

§ 1.1502–43T [Removed]

■ **Par. 5.** Section 1.1502–43T is removed.

■ **Par. 6.** Section 1.1502–47 is amended by revising paragraphs (s) and (t) to read as follows:

§ 1.1502–47 Consolidated returns by life-nonlife groups.

* * * * *

(s) *Filing requirements*—(1) *In general.* To file a consolidated income tax return for a life-nonlife consolidated group, the common parent shall—

(i) File the applicable consolidated corporate income tax return: a Form 1120–L, ''U.S. Life Insurance Company Income Tax Return,'' where the common parent is a life insurance company; a Form 1120–PC, ''U.S. Property and Casualty Insurance Company Income Tax Return,'' where the common parent is an insurance company, other than a life insurance company; or a Form 1120, ''U.S. Corporation Income Tax Return,'' where the common parent is any other type of corporation;

(ii) Indicate clearly on the face of this return that such corporate tax return is a life-nonlife return;

(iii) Show any set offs required by paragraphs (g), (m), and (n) of this section;

(iv) Report separately the nonlife consolidated taxable income or loss, determined under paragraph (h) of this section, on a Form 1120 or 1120–PC (whether filed by the common parent or as an attachment to the consolidated return), as the case may be, of all nonlife members of the consolidated group; and

(v) Report separately the consolidated partial Life Insurance Company Taxable Income (as defined by paragraph (d)(3) of this section), determined under paragraph (j) of this section, on a Form 1120–L (whether filed by the common parent or as an attachment to the consolidated return), of all life members of the consolidated group.

(2) *Cross reference.* See § 1.1502–75(j), regarding the inclusion in a corporate tax return of the required statements and schedules for subsidiaries.

(t) *Effective/applicability date.* Paragraph (s) of this section applies to any consolidated Federal income tax return due (without extensions) on or after December 21, 2009. However, a consolidated group may apply paragraph (s) of this section to any consolidated Federal income tax return filed on or after December 21, 2009. For returns due before December 21, 2009, see § 1.1502–47T as contained in 26 CFR part 1 in effect on April 1, 2009.

§ 1.1502–47T [Removed]

■ **Par. 7.** Section 1.1502–47T is removed.

■ **Par. 8.** Section 1.1561–0 is added to read as follows:

§ 1.1561–0 Table of contents.

This section lists the table of contents for §§ 1.1561–1 through 1.1561–3.

§ 1.1561–1 General rules regarding certain tax benefits available to the component members of a controlled group of corporations.

(a) In general.
(1) Limitation.
(2) Definitions.
(b) Special rules.
(1) S Corporation.
(2) 52–53-week taxable year.
(c) Tax avoidance.
(d) Effective/applicability date.

§ 1.1561–2 Special rules for allocating reductions of certain Section 1561(a) tax-benefit items.

(a) Additional tax.
(1) Calculation.
(2) Apportionment.
(3) Examples.
(b) Reduction to the amount exempted from the alternative minimum tax.
(1) Calculation.
(2) Apportionment.
(3) Examples.
(c) Accumulated earnings credit.
(d) [Reserved].
(e) Short taxable year not including a December 31st date.
(1) General rule.
(2) Additional rules.
(3) Calculation of the additional tax.
(4) Calculation of the alternative minimum tax.
(5) Examples.
(f) Effective/applicability date.

§ 1.1561–3 Allocation of the section 1561(a) tax items.

(a) Filing of form.
(1) In general.
(2) Exception for component members that are members of a consolidated group.
(b) No apportionment plan in effect.
(c) Apportionment plan in effect.
(1) Adoption of plan.
(2) Limitation on adopting a plan.
(3) Termination of plan.
(d) Effective/applicability date.

§ 1.1561–0T [Removed]

■ **Par. 9.** Section 1.1561–0T is removed.

■ **Par. 10.** Section 1.1561–1 is added to read as follows:

§ 1.1561–1 General rules regarding certain tax benefits available to the component members of a controlled group of corporations.

(a) *In general*—(1)—*Limitation.* Part II (section 1561 and following) of subchapter B of chapter 6 of the Internal Revenue Code (Code) (part II) provides rules to limit the amounts of certain specified tax benefit items of component members of a controlled group of corporations for their tax years which include a particular December 31st date, or, in the case of a short taxable year member (see section 1561(b) and § 1.1561–2(e)), the date substituted for that December 31st date. The amount of the tax items enumerated in section 1561(a) available to any of the component members of a controlled group shall be determined for purposes of subtitle A of the Code as if the component members were a single corporation. Certain other tax items also set forth in section 1561(a) (for example, the additional tax imposed by section 11(b)(1) and the section 55(d)(3) phase out of the alternative minimum tax exemption amount) will be determined by combining the positive taxable income or positive alternative minimum taxable income of the component members of such a group and then allocating the amount of such items among those members.

(2) *Definitions.* For certain definitions (including the definition of a *controlled*

group of corporations and a *component member*) and special rules for purposes of this part II see section 1563.

(b) *Special rules*—(1) *S Corporation.* For purposes of this part II, the term *corporation* includes a small business corporation (as defined in section 1361). However, for the treatment of such a corporation as an *excluded member* of a controlled group of corporations see § 1.1563–1(b)(2)(ii)(C).

(2) *52–53-week taxable year.* In the case of corporations electing a 52–53-week taxable year under section 441(f)(1), the provisions of this part II shall be applied in accordance with the special rule of section 441(f)(2)(A). See § 1.441–2.

(c) *Tax avoidance.* The provisions of this part II do not delimit or abrogate any principle of law established by judicial decision, or any existing provisions of the Code, such as sections 269, 482, and 1551, which serve to prevent any avoidance or evasion of income taxes.

(d) *Effective/applicability date.* This section applies to any tax year beginning on or after December 21, 2009. However, taxpayers may apply this section to any Federal income tax return filed on or after December 21, 2009. For tax years beginning before December 21, 2009, see § 1.1561–1T as contained in 26 CFR part 1 in effect on April 1, 2009.

§ 1.1561–1T [Removed]

■ **Par. 11.** Section 1.1561–1T is removed.

■ **Par. 12.** Section 1.1561–2 is added to read as follows:

§ 1.1561–2 Special rules for allocating reductions of certain section 1561(a) tax-benefit items.

(a) *Additional tax*—(1) *Calculation*—(i) *In general.* For the purpose of determining the amount, if any, of the additional tax imposed by section 11(b)(1) (the additional tax), the taxable incomes of all of the component members of a controlled group of corporations shall be combined to determine whether either of the income thresholds for imposing the additional tax have been attained.

(ii) *Special rules.* For purposes of paragraph (a)(1)(i) of this section—

(A) *Component member* means a corporation that is apportioned some part of any applicable tax bracket amount; and

(B) *Taxable income* means the positive taxable income of a component member for its entire tax year (even if it was not a member of the group for each day of that tax year) that includes the same December 31st testing date, which is also applicable to the other component members of that same controlled group.

(2) *Apportionment*—(i) *General rule.* Any additional tax determined under paragraph (a)(1) of this section shall be apportioned among such members in the same manner as the corresponding tax bracket of section 11(b)(1) is apportioned. For rules to apportion the section 11(b)(1) tax brackets among the component members of a controlled group, see § 1.1561–3(b) or (c).

(ii) *Apportionment methods.* Unless the component members of a controlled group elect to use the first-in-first-out (FIFO) method described in paragraph (a)(2)(ii)(B) of this section, such members are required to apportion the amount of the additional tax using the proportionate method described in paragraph (a)(2)(ii)(A) of this section. These component members may elect the FIFO method by specifically adopting such method in their apportionment plan.

(A) *Proportionate method.* Under the proportionate method, the additional tax is allocated to each component member in the same proportion as the portion of the tax-benefit amount that inured to a member from utilizing lower tax brackets bears to the amount of the group's total tax-benefit amount inuring to it from utilizing those lower tax brackets. The tax-benefit amount that inures to a corporation from using a particular tax bracket is the tax savings that such corporation realizes from having a portion of its taxable income taxed at the lower rate attributed to that tax bracket instead of the high tax rates to which it would otherwise be subject. The steps for applying the proportionate method of allocation are as follows:

(*1*) *Step 1.* The regular tax (not including the additional tax) owed by a component member under a particular tax bracket is divided by the total tax owed by all component members under that tax bracket;

(*2*) *Step 2.* The percentage calculated under *Step 1* is multiplied by the total tax-benefit amount inuring to all the members of the group from their use of this tax bracket. This computed amount equals the portion of the group's tax-benefit amount that inured to such member from using its portion of this tax bracket;

(*3*) *Step 3.* The amount determined under *Step 2* is divided by the total tax-benefit amount, inuring to all the component members of the group from using all the tax brackets to which any component member's income was subject;

(*4*) *Step 4.* The percentage calculated under *Step 3* is multiplied by the amount of the group's additional tax. The amount determined under this *Step 4* equals the amount of the additional tax apportioned to such member for that tax bracket; and

(*5*) *Step 5.* If a component member is liable for regular tax (not including the additional tax) under more than one tax bracket, that member must calculate the amount of the additional tax apportioned to it with respect to each tax bracket. Accordingly, steps 1 through 4 must be applied for each tax bracket applicable to that member. The sum of all the apportioned amounts of additional tax from each tax bracket for which the member is subject is the total amount of the additional tax apportioned to that member.

(B) *FIFO method.* Under the FIFO method, the first dollars of the additional tax are to be allocated proportionately to the members starting with the lowest tax bracket (that is, the first tax bracket), up to the amount of the tax benefit inuring to those members from using that tax bracket. Any remaining amount of additional tax is then allocated proportionately among the component members who use the next higher tax bracket, and so on, until the entire amount of the additional tax has been fully apportioned among the members. For example, the first $9,500 of the additional tax liability of a controlled group is apportioned entirely to the member(s) that availed themselves of the benefit of the 15 percent tax bracket.

(3) *Examples.* The provisions of this paragraph (a) may be illustrated by the following examples:

Example 1. (i) *Facts.* A controlled group of corporations consists of three members: X, Y and Z. X owns all the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of the controlled group have an apportionment plan in effect. The members apportioned 80% of the 15 percent tax-bracket amount ($40,000) to X and the remaining 10% ($10,000) to Y. The members apportioned 100% of the 25 percent tax-bracket amount ($25,000) to Y. However, these members have not adopted the FIFO method for apportioning the additional taxes. Therefore, they must follow the proportionate method. For 2007, X had taxable income (TI) of $40,000, Y had TI of $60,000 and Z had TI of $100,000. Thus the total TI of the group is $200,000.

(ii) *Calculating the tax from the tax brackets and the tax benefit derived from such tax.* (A) *Regular tax of group subject to a 15 percent tax rate.* (*1*) *Calculating the group's tax which resulted from applying a 15 percent tax rate.* The amount of tax under the 15 percent tax bracket is $7,500 (15% × $50,000).

(*2*) *The tax-benefit amount inuring to the group from using the 15 percent tax bracket.*

A tax benefit inures to those members of the group who avail themselves of the 15 percent tax bracket. That tax benefit results from having the first $50,000 of its income taxed at the 15 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 15 percent tax bracket is $9,500 ($17,000 (34% × $50,000) minus $7,500 (15% × $50,000)).

(B) *Regular tax of group subject to a 25 percent tax rate.* (*1*) *Calculating the group's tax which resulted from applying a 25 percent tax rate.* The amount of tax under the 25 percent tax bracket is $6,250 (25% × $25,000 ($75,000 − $50,000)).

(*2*) *The tax-benefit amount inuring to the group from using the 25 percent tax bracket.* A tax benefit inures to those members of the group who avail themselves of the 25 percent tax bracket. That tax benefit results from having $25,000 of its income taxed at the 25 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 25 percent tax bracket is $2,250 ($8,500 (34% × $25,000) minus $6,250 (25% × $25,000)).

(C) *Regular tax of group subject to a 34 percent tax rate.* (*1*) *Calculating the group's tax which resulted from applying a 34 percent tax rate.* The amount of tax under the 34 percent tax bracket is $42,500 (34% × $125,000 ($200,000 (total TI) − $75,000) (amount taxed at lower rates)).

(*2*) *The tax-benefit amount inuring to the group from using the 34 percent tax bracket.* The group's total TI of $200,000 is less than the $15,000,000 income threshold for imposing any 3 percent additional tax on the group. Therefore, there is no tax benefit inuring to the members of this group for using the 34 percent tax bracket.

(D) *The computation of the additional tax.* Since the combined TI of the group exceeds $100,000, a 5 percent additional tax is imposed on the group. That 5 percent additional tax is the lesser amount of 5 percent of the group's taxable income exceeding $100,000 or $11,750. Five percent of that excess amount of taxable income is $5,000 (5% × $100,000 ($200,000 − $100,000)). Since $5,000 is less than $11,750, the group's 5 percent additional tax is $5,000.

(iii) *Apportioning the amount of additional tax to each applicable tax bracket.* (A) *The apportioned tax under each bracket.* The amount of tax owed by each member under each tax bracket pursuant to the apportionment plan is as follows:

Name of component member	Amount of tax owed under the 15% tax bracket	Amount of tax owed under the 25% tax bracket	Amount of tax owed under the 34% tax bracket
X	$6,000	0	0
Y	1,500	$6,250	$8,500
Z	0	0	34,000

(B) *Apportioning the 5 percent additional tax among the component members of the controlled group.* Since the group did not elect to adopt the FIFO method of apportionment, it is required to apportion the $5,000 of its 5 percent additional tax pursuant to the proportionate method in the following manner:

(*1*) *Amount of the additional tax apportioned to X.* Pursuant to the plan, X was liable for $6,000 of the group's $7,500 regular tax (80%) owed under the 15 percent tax bracket (and X is not liable for any regular tax under any higher tax bracket). See *Step 1* of paragraph (a)(2)(ii)(A) of this section. X's portion of the group's tax benefit which it derived from using the 15 percent tax rate is $7,600 (0.8 × $9,500). See *Step 2.* The tax benefit inuring to the entire group from using the 15 percent and 25 percent tax brackets is $11,750 ($9,500 (from the 15 percent tax bracket) + $2,250 (from the 25 percent tax bracket)). So, X's percentage portion of the group's total tax benefit is $7,600/$11,750 (64.68%). See *Step 3.* Thus, X's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is $3,234 (0.6468 × $5,000). See *Step 4.*

(*2*) *Amount of the additional tax apportioned to Y.* (*i*) *Regular tax apportioned to Y from using the 15 percent tax bracket.* Pursuant to the plan, Y was liable for the remaining $1,500 of the group's $7,500 regular tax (20%) owed under the 15 percent tax bracket. See *Step 1.* Y's portion of the group's tax benefit which it derived from using the 15 percent tax rate is $1,900 ($9,500 − $7,600, or 0.2 × $9,500). See *Step 2.* So, Y's percentage portion of the group's total tax benefit is $1,900/$11,750 (16.17%). See *Step 3.* Thus, Y's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is $809 (0.1617 × $5,000). See *Step 4.*

(*ii*) *Regular tax apportioned to Y from using the 25 percent tax bracket.* Pursuant to the plan, Y was liable for 100% of the group's regular tax owed under the 25 percent tax bracket, an amount of $6,250. See *Step 1.* Y is, therefore, entitled to 100% of the group's tax benefit which it derived from using this tax bracket, an amount of $2,250. See *Step 2.* So, Y's percentage portion of the group's total tax benefit is $2,250/$11,750 (19.15%). See *Step 3.* Thus, Y's allocated portion of the 5 percent additional tax from using the 25 percent tax bracket is $957 (0.1915 × $5,000). See *Step 4.* Y's total allocated portion of the additional tax is $1,766 ($809 + $957). See *Step 5.*

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that on August 31, 2007, X of the X–Y–Z controlled group sold all of the stock of Z to M of the M–N controlled group, a pair of corporations unrelated to the X–Y group. Pursuant to the terms of the sales agreement, the members of the M–N group properly notified the members of the X–Y group on a timely basis that Z's taxable income for its 2007 tax year, as based on the group's December 31st testing date, was $100,000.

(ii) *Controlled group analysis.* On December 31st, 2007, X and Y are members of the selling controlled group and M, N and Z are members of the buying controlled group. However, pursuant to section 1563(b)(3), Z is treated as an additional member of the X–Y group on December31st 2007, since it was a member for at least one-half the number of days (243 out of 364) during the period beginning on January 1 and ending on December 30, 2007. Conversely, pursuant to section 1563(b)(2)(A), Z is treated as an excluded member of the M–N controlled group. Therefore, on December 31st, 2007, X, Y, and Z qualify as component members of the selling group, and only M and N qualify as component members of the buying group.

(iii) *Additional tax analysis.* With regard to X and Y's 2007 tax years, X and Y together owed $5,000 of additional tax, as calculated in *Example 1.* X's allocated portion of the additional tax is $3,234, as calculated in the manner set forth in *Example 1.* Y's allocated portion of the additional tax is $1,766, also as calculated in the manner set forth in *Example 1.*

Example 3. (i) *Facts.* The facts are the same as in *Example 2,* except that in 2012, pursuant to an IRS audit, Z's 2007 taxable income was re-determined. It was adjusted by an income increase of $10,000. Pursuant to the terms of the sales agreement, the members of the M–N group timely notified the members of the X–Y group of Z's income adjustment.

(ii) *Additional tax analysis.* For 2007 the X–Y–Z group owed a revised additional tax in the amount of $5,500, allocated as follows: $3,557.40 to X and $1,942.60 to Y. X and Y each filed an amended 2007 tax return to report their portions of the $500 increase to the group's additional tax. Pursuant to their apportionment plan for allocating their regular tax, and as a result of defaulting to the proportionate method for allocating the group's additional tax, X reported $323.40 as its share of the group's increase to its additional tax and Y reported $176.60 as its share of the group's increase to its additional tax.

Example 4. The facts are the same as in *Example 1,* except that the members elected in their apportionment plan to adopt the FIFO method for apportioning the additional tax. Under the FIFO method, the 5 percent additional tax amount of $5,000 will be apportioned entirely to those members who would benefit from using the 15 percent tax bracket, by reason that $5,000 of the group's

additional tax is less than $9,500, which is the full tax-benefit amount inuring to a controlled group from having a 15 percent tax rate applied to the full income bracket subject to that rate. Since X derived 80 percent of the group's tax benefit by its use of the 15 percent tax bracket, its share of the group's 5 percent additional tax is $4,000 (80% × $5,000), and Y's share of the group's 5 percent additional tax is, therefore, $1,000, which is the remaining amount of the group's 5 percent additional tax, attributable to the 15 percent tax bracket.

(b) *Reduction to the amount exempted from the alternative minimum tax*—(1) *Calculation.* The alternative minimum taxable incomes of the component members of a controlled group of corporations shall be taken into account in calculating the reduction set forth in section 55(d)(3) to the amount exempted from the alternative minimum tax (the exemption amount). For purposes of the preceding sentence, *alternative minimum taxable income* means the positive alternative minimum taxable income of a component member for its entire tax year (even if it was not a member of the group for each day of that tax year) that includes the same December 31st testing date, which is also applicable to the other component members of that same controlled group.

(2) *Apportionment.* Any reduction to the exemption amount shall be apportioned to the component members of a controlled group in the same manner that the amount of the exemption (provided in section 55(d)(2)) to the alternative minimum tax was allocated under section 1561(a). For rules to apportion the section 55(d)(2) exemption amount among the component members of a controlled group, see § 1.1561–3(b) or (c).

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following example:

Example. (i) *Facts.* A controlled group of corporations consists of three members: X, Y and Z. X owns all of the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of this controlled group have an apportionment plan in effect. The group has chosen to apportion the entire section 55(d)(2) exemption amount of $40,000 to Z. For 2007, X had alternative minimum taxable income (AMTI) of $40,000, Y had AMTI of $60,000 and Z had AMTI of $100,000. Thus the total AMTI of the group is $200,000.

(ii) *Calculating the reduction to the exemption amount.* Section 55(d)(3)(A) provides that the section 55(d)(2) exemption amount shall be reduced (but not below zero) by an amount equal to 25 percent of the amount by which the AMTI of a corporation exceeds $150,000. For the purpose of computing the group's AMTI, the AMTI of each of the component members, for their tax years that have the same December 31st testing date, shall be taken into account. In accordance with these provisions, the $40,000 exemption amount is reduced by $12,500 (25% × $50,000 ($200,000 − $150,000)). Pursuant to the group's allocation plan, the entire $12,500 reduction to the exemption amount is allocated to Z. Thus, after such allocation, Z's $40,000 exemption amount is reduced to $27,500 ($40,000 − $12,500).

(c) *Accumulated earnings credit.* The component members of a controlled group of corporations are permitted to allocate the amount of the accumulated earnings credit unequally if they have an apportionment plan in effect.

(d) [Reserved].

(e) *Short taxable years not including a December 31st date*—(1) *General rule.* If a corporation has a short taxable year not including a December 31st date and, after applying the rules of section 1561(b) and paragraph (e)(2)(i) of this section, it qualifies as a component member of the group with respect to its short taxable year (short-year member), then, for purposes of subtitle A of the Internal Revenue Code, the amount of any tax-benefit item described in section 1561(b) allocated to that component member's short taxable year shall be the amount specified in section 1561(a) for that item, divided by the number of corporations which are component members of that group on the last day of that component member's short taxable year. The component members of such group may not apportion, by an apportionment plan, an amount of such tax-benefit item to any short-year member that differs from equal apportionment of that item.

(2) *Additional rules.* For purposes of paragraph (e)(1) of this section—

(i) Section 1563(b) shall be applied as if the last day of the taxable year of a short-year member were substituted for December 31st; and

(ii) The term *short taxable year* does not refer to any portion of a tax year of a corporation for which its income is required to be included in a consolidated return pursuant to § 1.1502–76(b).

(3) *Calculation of the additional tax.* A short-year member (as defined in paragraph (e)(1) of this section) for its short taxable year calculates its additional tax liability imposed by section 11(b)(1) only on its own income, and therefore the subsequent calculation of the additional tax liability with regard to the remaining members of the group will not include the income of this short-year member.

(4) *Calculation of the alternative minimum tax.* If a component member has a tax year of less than 12 months, whether or not such tax year includes a December 31st date, see section 443(d) for the annualization method required for calculating the alternative minimum tax.

(5) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. Formation of a new member of a controlled group. (i) *Facts.* On January 2, 2007, corporation X transfers cash to newly formed corporation Y (which begins business on that date) and receives all of the stock of Y in return. X also owns all of the stock of corporation Z on each day of 2006 and 2007. X, Y and Z have an apportionment plan in effect, apportioning the 15 percent tax-bracket amount as follows: 40% ($20,000) to each of X and Y and 20% ($10,000) to Z. X, Y and Z each file a separate return with respect to the group's December 31st, 2007 testing date. X is on a calendar tax year and Z is on a fiscal tax year ending on March 31. Y adopts a fiscal year ending on June 30 and timely files a tax return for its short taxable year beginning on January 2, 2007, and ending on June 30, 2007.

(ii) *Y's short taxable year.* On June 30, 2007, Y is a component member of a parent-subsidiary controlled group of corporations composed of X, Y and Z. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to Y's short taxable year ending on June 30, 2007. Rather, Y is entitled to exactly ⅓ of such bracket amount, or $16,667.

(iii) *The members' subsequent tax years.* On December 31st, 2007, X, Y and Z are component members of a parent-subsidiary controlled group of corporations. For their tax years that include December 31st, 2007 (X's calendar year ending December 31st, 2007, Z's fiscal year ending March 31, 2008 and Y's fiscal year ending June 30, 2008), X, Y and Z apportion among themselves the full amount of all of the applicable tax brackets pursuant to their apportionment plan. For example, 40% of the 15 percent tax-bracket amount, or $20,000, was apportioned to each of X and Y, and the remaining 10%, or $10,000, was apportioned to Z.

Example 2. Allocating a tax bracket to the short taxable year of a liquidated member of a controlled group. (i) *Facts.* On January 1, 2007, corporation P owns all of the stock of corporations S_1, S_2 and S_3 (the P group). Each of these four component members of the P group, with respect to the group's December 31st, 2007 testing date, files its separate return on a calendar year basis. These members have an apportionment plan in effect (the P group plan) under which S_1 and S_2 are each entitled to 40% of the 15 percent tax-bracket amount ($20,000), and P and S_3 are each entitled to 10% of the 15 percent tax-bracket amount ($5,000). On May 31, 2007, S_1 liquidates and therefore files a return for the short taxable year beginning on January 1, 2007, and ending on May 31, 2007. On July 31, 2007, S_2 liquidates and therefore files a return for the short taxable year beginning on January 1, 2007 and ending on July 31, 2007. P and S_3 each file a return for their 2007 calendar tax years.

(ii) *Apportionment of the 15 percent tax bracket to* S_1 for its short taxable year. On

May 31, 2007, S_1 is a component member of the P group composed of P, S_1, S_2 and S_3. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S_1's short taxable year ending on June 30, 2007. Rather, S_1 is entitled to exactly ¼ of such bracket amount, or $12,500.

(iii) *Apportionment of the 15 percent tax bracket to* S_2 for its short taxable year. On July 31, 2007, S_2 is a component member of the P group composed of P, S_2 and S_3. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S_2's short taxable year ending on June 30, 2007. Rather, S_2 is entitled to exactly ⅓ of such bracket amount, or $16,667.

(iv) *Apportionment of the 15 percent tax bracket to P and* S_3 for each of their calendar tax years. On December 31st, 2007, P and S_3 are component members of the P group. Accordingly, for P and S_3's 2007 calendar tax year, they are each apportioned $25,000 of the 15 percent tax bracket, pursuant to the applicable P group plan.

Example 3. Liquidation of member after its transfer to another controlled group. (i) *Facts.* The facts are the same as in *Example 2,* except that P, on April 30, 2007, sold all of the stock of S_2 to the M–N controlled group. At the time of the sale, M and N are both unrelated to any members of the P group. As in *Example 2,* S_2 liquidates on July 31, 2007, and therefore files a tax return for its short taxable year beginning on January 1, 2007, and ending on July 31, 2007. Pursuant to the sales agreement, the N–M group timely notified P that S_2 had liquidated.

(ii) *Controlled group analysis.* On April 30, 2007, the date of the sale of S_2, the P group reasonably expected that S_2 would be treated as an excluded member with respect to its December 31st, 2007 testing date. On that April 30th date, S_2 had been a member of the P group for less than one-half the number of days of what it expected would be a full 2007 calendar tax year preceding December 31st, 2007 (120 days (January 1–April 30) out of 364 days (January 1–December 30)). Yet, as a result of S_2's subsequent liquidation by the M–N group prior to December 31st, 2007, S_2 became a component member of the P group with respect to the P group's December 31st, 2007 testing date. With respect to that December 31st testing date, S_2 thus was a member of the P group for more than one-half of the number of days of its tax year ending on July 31, 2007, which days proceeded December 31st, 2007 (120 days (January 1–April 30 of 2007) out of 211 days (January 1–July 30 of 2007)). The allocation of the 15 percent tax-bracket amount to the P group members is determined in the same manner as in *Example 2* and, therefore, the bracket amounts allocated to P, S_1, S_2 and S_3 are the same as determined in *Example 2.* The allocation of the bracket amounts would be the same if, at the time P sold all of the S_2 stock, the parties had made a section 338(h)(10) election.

Example 4. Short tax year including a December 31st date. Corporation X owns all of the stock of corporations Y and Z. X, Y and Z each file separate returns. X and Y are on a calendar tax year and Z is on a fiscal tax year beginning October 1 and ending September 30. On January 2, 2007, Z liquidates. Because Z's final tax year (beginning on October 1, 2006 and ending on January 2, 2007) includes a December 31st date, that is, December 31, 2006, it is therefore not subject to the short taxable year rule provided by section 1561(b) and paragraph (e) of this section. Accordingly, Z is a component member of the X–Y–Z group, for the group's December 31st, 2006 testing date. Thus, the rules of this paragraph (e) do not limit the amount of any of the tax-benefit items of section 1561(a) available to Z or to this controlled group.

(f) *Effective/applicability date.* This section applies to any tax year beginning on or after December 21, 2009. However, taxpayers may apply this section to any Federal income tax return filed on or after December 21, 2009. For tax years beginning before December 21, 2009, *see* § 1.1561–2T as contained in 26 CFR part 1 in effect on April 1, 2009.

§ 1.1561–2T [Removed]

■ **Par. 13.** Section 1.1561–2T is removed.

■ **Par. 14.** Section 1.1561–3 is added to read as follows:

§ 1.1561–3 Allocation of the section 1561(a) tax items.

(a) *Filing of form*—(1) *In general.* For each tax year that a corporation is a component member of the same controlled group of corporations on a December 31st (its testing date), or, in the case of a short-year member (see section 1561(b) and § 1.1561–2(e)), the date substituted for that December 31st date (its testing date), such corporation and all the other component members of such group each must file the required form (that is, Schedule O or any successor form) with the Federal income tax return for that component member's tax year that includes a particular testing date. Each such corporation must file that form with its return whether or not—

(i) An apportionment plan is in effect; or

(ii) Any change is made to the group's apportionment of its section 1561(a) tax benefit items from the previous year.

(2) *Exception for component members that are members of a consolidated group.* If any of the component members of a controlled group of corporations are also members of a consolidated group, the parent of such consolidated group shall file only one form on behalf of all such members. Such form shall contain the information required for each such member.

(b) *No apportionment plan in effect.* If the component members of a controlled group of corporations do not have an apportionment plan in effect, the amounts of the section 1561(a) items must be divided equally among all such members. For purposes of the preceding sentence, if any of the component members of a controlled group of corporations are also members of a consolidated group, such members will each be treated as a separate component member of the controlled group.

(c) *Apportionment plan in effect*—(1) *Adoption of plan.* The component members of a controlled group of corporations consent to the adoption (or amendment) of an apportionment plan by checking the box to that effect on such form. For purposes of this paragraph (c)—

(i) An apportionment plan that is adopted (including a plan that has been amended) continues in effect until it is terminated;

(ii) A consolidated group is treated collectively as one component member of such group. This treatment occurs even where a member of that consolidated group has joined or left the group, if after such corporation joins or leaves the consolidated group, that group remains in existence, pursuant to § 1.1502–75(d); and

(iii) The members must allocate the amounts of the section 1561(a) items between/among themselves as described in the plan.

(2) *Limitation on adopting a plan*—(i) *Sufficient statute of limitations period for making an assessment of tax.* The members may only adopt or amend such a plan if there is at least one year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against every member the tax liability of which would be increased by the adoption of such a plan.

(ii) *Insufficient statute of limitations period for making an assessment of tax.* If any member cannot satisfy the requirement of paragraph (c)(2)(i) of this section, the members may not adopt or amend such a plan unless the member not satisfying such requirement has entered into an agreement with the Internal Revenue Service to extend the statute of limitations for the limited purpose of assessing any deficiency against such member attributable to the adoption of such a plan.

(3) *Termination of plan.* An apportionment plan that is in effect for the component members of a controlled group with respect to a preceding December 31st is terminated with respect to the current December 31st if—

(i) Each member of such group consents to the termination of such a plan for the current December 31st by

checking the box to that effect on its form;

(ii) The controlled group ceases to remain in existence (within the meaning of section 1563(a)) during the calendar year ending on the current December 31st;

(iii) Any corporation which was a component member of such group on the preceding December 31st is not a component member of such group on the current December 31st; or

(iv) Any corporation which was not a component member of such group on the preceding December 31st is a component member of such group on the current December 31st.

(d) *Effective/applicability date.* This section applies to any tax year beginning on or after December 21, 2009. However, taxpayers may apply this section to any Federal income tax return filed on or after December 21, 2009. For tax years beginning before December 21, 2009, *see* § 1.1561–3T as contained in 26 CFR part 1 in effect on April 1, 2009.

§ 1.1561–3T [Removed]

■ **Par. 15.** Section 1.1561–3T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 17, 2009.

Michael Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–30547 Filed 12–22–09; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AB20

Offset of Tax Refund Payments To Collect Past-Due, Legally Enforceable Nontax Debt

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), is amending its regulation governing the centralized offset of tax refund payments to collect nontax debts owed to the United States. The amendment authorizes the offset of Federal tax refunds irrespective of the amount of time the debt has been outstanding.

DATES: This rule is effective December 28, 2009.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Food, Conservation and Energy Act of 2008, Public Law 110–234, Section 14219, 22 Stat. 923 (2008) (''the Act'') amended the Debt Collection Act of 1982 (as amended by the Debt Collection Improvement Act of 1996) to authorize the offset of Federal nontax payments (for example, contract and salary payments) to collect delinquent Federal debt without regard to the amount of time the debt has been delinquent. Prior to this change, nontax payments could be offset only to collect debt that was delinquent for a period of less than ten years.

There is no similar time limitation in the statutes authorizing offset of Federal tax refund payments to collect Federal nontax debts (*see* 26 U.S.C. 6402(a) and 31 U.S.C. 3720A). However, Treasury had imposed a time limitation on collection of debts by tax refund offset in order to create uniformity in the way that it offset payments. Now that the ten-year limitation has been eliminated for the offset of nontax payments, the rationale for including a ten-year limitation for the offset of tax refund payments no longer applies. Therefore, on June 11, 2009, Treasury issued a notice of proposed rulemaking proposing to remove the limitations period by explicitly stating that no time limitation shall apply. *See* 74 FR 27730. The proposed rule explained that by removing the time limitation, all Federal nontax debts, including debts that were ineligible for collection by offset prior to the removal of the limitations period, may now be collected by tax refund offset.

Additionally, to avoid any undue hardship, Treasury proposed the addition of a notice requirement applicable to debts that were previously ineligible for collection by offset because they had been outstanding for more than ten years. For such debts, creditor agencies must certify to FMS that a notice of intent to offset was sent to the debtor after the debt became ten years delinquent. This notice of intent to offset is meant to alert the debtor that any debt the taxpayer owes to the United States may now be collected by offset, even if it is greater than ten years delinquent. It also allows the debtor additional opportunities to dispute the debt, enter into a repayment agreement or otherwise avoid offset. This requirement will apply even in a case where notice was sent prior to the debt becoming ten years old. This requirement applies only with respect to debts that were previously ineligible for collection by offset because of the previous time limitation. Accordingly, it does not apply with respect to debts that could be collected by offset without regard to any time limitation prior to this regulatory change—for example, Department of Education student loan debts.

II. Discussion of Comments

Public Comments

FMS published a Notice of Proposed Rulemaking with request for comments on June 11, 2009 at 74 FR 27730. Accordingly, FMS is issuing this Final Rule after a review of the comments received.

FMS received two comments on the proposed rule. One commenter expressed general support for the rule.

The second commenter questioned whether the rule should be promulgated if the rule extended the time limitation on the collection of debts owed to entities receiving Federal financial relief in times of economic crisis. The commenter expressed concern that such a rule would have a larger negative impact on the economy than indicated in the notice of proposed rulemaking. This rule, however, only applies to the collection of nontax debts owed to the United States. It does not apply to debts owed to private entities receiving Federal assistance. Therefore, this rule will not have the effect anticipated by the commenter.

FMS did not make any changes to the proposed rule based on the comments received.

III. Regulatory Analysis

Special Analysis

FMS has determined that good cause exists to make this final rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. Treasury has been collecting delinquent Federal nontax through tax refund offset since 1986. This final rule only provides guidance that is expected to facilitate Federal agencies' participation in the tax refund offset program with respect to debts that were outstanding more than ten years prior to the effective date of this rule. Therefore, FMS believes that good cause exists, and that it is in

the public interest, to make this final rule effective upon publication.

Regulatory Planning and Review

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

Regulatory Flexibility Act Analysis

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. The rule only affects the time that a delinquent nontax debt may be collected. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 285

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

■ For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

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

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

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

■ 2. In § 285.2, remove paragraph (d)(1)(ii), redesignate paragraphs (d)(1)(iii) through (d)(1)(v) as paragraphs (d)(1)(ii) through (d)(1)(iv), respectively, and add paragraph (d)(6) as follows:

§ 285.2 Offset of tax refund payments to collect past-due, legally enforceable nontax debt.

* * * * *

(d) * * *

(6)(i) Creditor agencies may submit debts to FMS for collection by tax refund offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were delinquent for ten years or longer prior to January 27, 2010 may be collected by tax refund offset.

(ii) For debts outstanding more than ten years on or before January 27, 2010, creditor agencies must certify to FMS that the notice of intent to offset described in paragraph (d)(1)(ii)(B) of this section was sent to the debtor after the debt became ten years delinquent. This requirement will apply even in a case where notice was also sent prior to the debt becoming ten years delinquent, but does not apply to any debt that could be collected by offset without regard to any time limitation prior to January 27, 2010.

* * * * *

Dated: December 18, 2009.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–30550 Filed 12–24–09; 8:45 am]

BILLING CODE 4810–35–P

POSTAL SERVICE

39 CFR Part 111

Move Update Assessment Charges for Automation and Presort First-Class Mail and All Standard Mail Mailings

AGENCY: Postal Service™.

ACTION: Final rule, revised.

SUMMARY: The Postal Service issues this notice to revise the final rule that was published in the **Federal Register** on Tuesday, October 27, 2009 providing new Move Update assessment procedures, and to clarify the Performance-Based Verification process.

DATES: Effective January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, 202–268–7278.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** final rule published October 27, 2009 (74 FR 55140–42), the Postal Service provided notice of new Move Update assessment charges to be applied during the acceptance process. On November 25, 2009, the Postal Regulatory Commission (PRC) issued Order No. 348 on Move Update, which modified the Postal Service's requested Mail Classification Schedule (MCS) language filed on October 15, 2009. A change of address error tolerance of 30 percent was added to the MCS language, for determining whether a mailing fails the Move Update portion of the Performance-Based Verification (PBV) test.

The Commission retained language about a $0.07 Move Update noncompliance charge for Standard Mail®, and stated that this charge, rather than the difference between postage paid and the First-Class Mail® single-piece price, would apply when Standard Mail mailers do not comply with the Move Update standard. The Commission's modifications affect the Move Update procedures published in the October 27, 2009 final rule. This change is effective January 4, 2010, and will be reflected in the next DMM update on February 1, 2010.

Following are a background summary and descriptions of the changes and procedures for how Move Update assessment charges will be handled at the time of acceptance.

Background

Mailers who claim presorted or automation prices for First-Class Mail, or claim any Standard Mail prices, must identify on the postage statement which Move Update method was used to ensure that the mailing meets the Move Update standard. Additionally, on each postage statement, mailers or their agents, must also affix their signature and certify that the mailing presented for acceptance qualifies for the prices claimed. The Move Update standard requires that a mailer participate in an approved Move Update process, and use the change of address information received through the approved Move Update process, to correct the mailing addresses in the mailing. This has been a longstanding requirement for First-Class Mail presort and automation prices; however, prior to November 2008 the frequency with which a mailer was required to participate in the Move

Update process and make the requisite address changes was within the 185 days immediately preceding the date of mailing. In November 2008 the frequency was reduced to the 95 days immediately preceding the date of mailing. The Move Update standard, including the 95 day frequency, was extended to include all Standard Mail in November 2008. If a mailer does not identify a Move Update method and certify compliance, then the Postal Service can reject the mailing, unless the mailer agrees to pay the First-Class Mail single-piece price.

The Move Update standard is designed to reduce the number of mailpieces that require forwarding, return, or disposal as waste, thus reducing Postal Service costs. The standard also helps to assure that mail reaches its intended recipients in a timely manner.

Procedures

PBV procedures introduced in Spring 2009 allow the Postal Service to sample mailings during the acceptance process to compare mailpiece addresses within the sample against the change of address information in the National Change of Address (NCOA®) database. For the Move Update portion of PBV, addresses on the verification sample are compared to the NCOA database. The ratio of the number of failed changes of address (COAs), addresses that should have been updated per Postal Service records, to the number of actual COAs (all changed addresses for addresses in the mailing) is calculated. If this ratio for the sample is sufficiently high, as detailed below, the mailing is subject to an additional postage charge, called the Move Update assessment charge. Mailers are offered the option of taking the mailing back and reworking it to avoid the Move Update assessment charge.

The Move Update standard is not new. All known mailings of commercial First-Class Mail pieces that did not follow address updating requirements have been subject to single-piece First-Class Mail prices for each piece in the mailing since 1997. When the Move Update standard was first applied to Standard Mail in 2008, the same consequence would have applied to Standard Mail mailings when addresses were found not to have been updated. This would have meant a substantial increase in postage for Standard Mail mailings. To mitigate this effect, the Postal Service announced in 2008 that it would charge $0.07 per piece for all pieces in Standard Mail mailings which fail the Move Update PBV test. In addition, in its October 15, 2009 Notice filed with the Postal Regulatory Commission after extensive consultation with mailers, the Postal Service announced that the $0.07 charge would apply to a portion of a mailing that fails the Move Update PBV test, and that samples with five or fewer pieces that were not updated for a COA would not be subject to the assessment, regardless of the error rate.

A provision for multi-client mailings is also included for the first year after implementation: a mailer submitting a combined multi-client mailing that fails the Move Update verification may have additional postage attributed to individual clients, given certain conditions described in detail on the ribbs.usps.gov website. If the conditions are met, the Move Update Assessment Charge of $0.07 could apply to a different number of pieces, thus affecting the overall assessment charge for the mailing.

The Move Update assessment charge was originally intended for May 2009 implementation. However, in response to customer concerns, we deferred implementation until January 4, 2010, as announced in the April 6, 2009 **Federal Register** final rule notice. The Postal Service also decided to apply a $0.07 per piece additional postage charge for First-Class Mail pieces found in mailings with a Move Update error rate of greater than 30 percent based on Postal Service PBV samplings at acceptance, with the five-piece exception discussed above.

The PBV process does not establish compliance or noncompliance with the Move Update standard; it is a tool that the Postal Service uses to test mailings. It is designed to facilitate the acceptance of mail in the event that the PBV Move Update process determines that a sample of the mailing has failed above a given tolerance. Mailers who believe the Move Update assessment charge was applied to their mailing(s) in error may appeal to the Pricing and Classification Service Center.

The percentage of a mailing paying the additional charge is based on the percentage of failed sample pieces above the tolerance. Each assessed piece pays an additional $0.07. As examples, with a tolerance of 30 percent exempted from the charge:

- If 40% of COAs sampled are not updated, the charge is applied to 10% (= 40% − 30%) of the total mailing.
- If 80% of COAs sampled are not updated, the charge is applied to 50% (= 80% − 30%) of the total mailing.

Recap

The following Domestic Mail Manual (DMM®) changes vary from the changes published in the October 27, 2009 **Federal Register** final rule. The application of the Move Update assessment charge is described directly, rather than by reference to the RIBBS Web site. The application of the Move Update noncompliance charge to a failure to comply with the Move Update standard would be determined outside of the PBV test at acceptance. Information about the noncompliance charge will be provided separately.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) as follows:

***Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM)**

* * * * *

200 Commercial Mail Letters and Cards

* * * * *

230 First-Class Mail

233 Prices and Eligibility

* * * * *

3.0 Basic Standards for First-Class Mail Letters

* * * * *

3.5 Move Update Standard

* * * * *

[Add new 3.5.4 to read as follows:]

3.5.4 Basis for Move Update Assessment Charge

Mailings are subject to a Move Update assessment charge if more than 30 percent of addresses with a change of address (COA) are not updated, based on the error rate found in USPS sampling at acceptance during Performance-Based Verification. Specifically, mailings for which the

sample contains greater than 30 percent failed COAs out of the total COAs are subject to additional postage charges as follows:

a. The percentage of the mailing paying the charge is based on the percentage of failed pieces above 30 percent.

b. Each of the assessed pieces is subject to the $0.07 per piece charge.

c. As an example, if 40% of COAs in the sample are not updated, then the charge is applied to 10% (= 40% − 30%) of the total mailing.

d. Mailings for which the sample has five or fewer pieces that were not updated for a COA are not subject to the assessment, regardless of the failure percentage.

* * * * *

240 Standard Mail

243 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Letters

* * * * *

3.9 Move Update Standard

3.9.1 Basic Standards

* * * Addresses subject to the Move Update standard must meet these requirements:

* * * * *

[Delete item 3.9.1.d in its entirety.]

* * * * *

[Add new 3.9.4 to read as follows:]

3.9.4 Basis for Move Update Assessment Charge

Mailings are subject to a Move Update assessment charge if more than 30 percent of addresses with a change of address (COA) are not updated, based on the error rate found in USPS sampling at acceptance during Performance-Based Verification. Specifically, mailings for which the sample contains greater than 30 percent failed COAs out of the total COAs are subject to additional postage charges as follows:

a. The percentage of the mailing paying the charge is based on the percentage of failed pieces above 30 percent.

b. Each of the assessed pieces is subject to the $0.07 per piece charge.

c. As an example, if 40% of COAs in the sample are not updated, then the charge is applied to 10% (= 40% − 30%) of the total mailing.

d. Mailings for which the sample has five or fewer pieces that were not updated for a COA are not subject to the assessment, regardless of the failure percentage.

* * * * *

300 Commercial Mail Flats

* * * * *

330 First-Class Mail

333 Prices and Eligibility

* * * * *

3.0 Eligibility Standards for First-Class Mail Flats

* * * * *

3.5 Move Update Standards

* * * * *

[Add new 3.5.4 to read as follows:]

3.5.4 Basis for Move Update Assessment Charge

Mailings are subject to a Move Update assessment charge if more than 30 percent of addresses with a change of address (COA) are not updated, based on the error rate found in USPS sampling at acceptance during Performance-Based Verification. Specifically, mailings for which the sample contains greater than 30 percent failed COAs out of the total COAs are subject to additional postage charges as follows:

a. The percentage of the mailing paying the charge is based on the percentage of failed pieces above 30 percent.

b. Each of the assessed pieces is subject to the $0.07 per piece charge.

c. As an example, if 40% of COAs in the sample are not updated, then the charge is applied to 10% (= 40% − 30%) of the total mailing.

d. Mailings for which the sample has five or fewer pieces that were not updated for a COA are not subject to the assessment, regardless of the failure percentage.

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Flats

* * * * *

3.9 Move Update Standard

3.9.1 Basic Standards

* * * Addresses subject to the Move Update standard must meet these requirements:

* * * * *

[Delete item 3.9.1 d in its entirety.]

* * * * *

[Add new 3.9.4 to read as follows:]

3.9.4 Basis for Move Update Assessment Charge

Mailings are subject to a Move Update assessment charge if more than 30 percent of addresses with a change of address (COA) are not updated, based on the error rate found in USPS sampling at acceptance during Performance-Based Verification. Specifically, mailings for which the sample contains greater than 30 percent failed changes of address (COAs) out of the total COA are subject to additional postage charges as follows:

a. The percentage of the mailing paying the charge is based on the percentage of failed pieces above 30 percent.

b. Each of the assessed pieces is subject to the $0.07 per piece charge.

c. As an example, if 40% of COAs in the sample are not updated, then the charge is applied to 10% (= 40% − 30%) of the total mailing.

d. Mailings for which the sample has five or fewer pieces that were not updated for a COA are not subject to the assessment, regardless of the failure percentage.

* * * * *

400 Commercial Parcels

* * * * *

430 First-Class Mail

433 Prices and Eligibility

* * * * *

3.0 Basic Standards for First-Class Mail Parcels

* * * * *

3.5 Move Update Standard

* * * * *

[Add new 3.5.4 to read as follows:]

3.5.4 Basis for Move Update Assessment Charge

Mailings are subject to a Move Update assessment charge if more than 30 percent of addresses with a change of address (COA) are not updated, based on the error rate found in USPS sampling at acceptance during Performance-Based Verification. Specifically, mailings for which the sample contains greater than 30 percent failed COAs out of the total COAs are subject to additional postage charges as follows:

a. The percentage of the mailing paying the charge is based on the percentage of failed pieces above 30 percent.

b. Each of the assessed pieces is subject to the $0.07 per piece charge.

c. As an example, if 40% of COAs in the sample are not updated, then the

charge is applied to 10% (= 40% − 30%) of the total mailing.

d. Mailings for which the sample has five or fewer pieces that were not updated for a COA are not subject to the assessment, regardless of the failure percentage.

* * * * *

440 Standard Mail

443 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Parcels

* * * * *

3.9 Move Update Standard

3.9.1 Basic Standards

* * * Addresses subject to the Move Update standard must meet these requirements:

* * * * *

[Delete item 3.9.1d in its entirety.]

* * * * *

[Add new 3.9.4 to read as follows:]

3.9.4 Basis for Move Update Assessment Charge

Mailings are subject to a Move Update assessment charge if more than 30 percent of addresses with a change of address (COA) are not updated, based on the error rate found in USPS sampling at acceptance during Performance-Based Verification. Specifically, mailings for which the sample contains greater than 30 percent failed COAs out of the total COAs are subject to additional postage charges as follows:

a. The percentage of the mailing paying the charge is based on the percentage of failed pieces above 30 percent.

b. Each of the assessed pieces is subject to the $0.07 per piece charge.

c. As an example, if 40% of COAs in the sample are not updated, then the charge is applied to 10% (= 40% − 30%) of the total mailing.

d. Mailings for which the sample has five or fewer pieces that were not updated for a COA are not subject to the assessment, regardless of the failure percentage.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–30619 Filed 12–22–09; 4:15 pm]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0515; FRL–8985–4]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Indiana has requested that EPA approve as revisions to its State Implementation Plan (SIP) both its continuous emission monitoring rule and alternative monitoring requirements for Alcoa Power Generating, Inc.—Warrick Power Plant. The alternative monitoring requirements allow the use of a particulate matter (PM) continuous emissions monitoring system (CEMS) in place of a continuous opacity monitor system (COMS).

DATES: This direct final rule will be effective February 26, 2010, unless EPA receives adverse comments by January 27, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0515, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2008–0515. 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 and 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean

EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What is EPA's analysis of the revision?
III. What are the environmental effects of this action?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. What is the background for this action?

Indiana requested a revision to its SIP that would add both 326 Indiana Administrative Code (IAC) 3–5–1, continuous emissions monitoring requirements, and an alternative monitoring plan contained in a Commissioner's Order for a Warrick County source. Indiana submitted its request on April 25, 2008.

More specifically, Indiana has requested that EPA approve as a SIP revision the continuous emissions monitoring requirements in 326 IAC 3–5–1. Section 1(b) of that regulation addresses the applicability of these requirements. The rule lists sources that must use continuous monitoring and what pollutants those sources must monitor. There is a provision in the rule, 326 IAC 3–5–1(c)(2)(A)(iii), which allows fossil fuel-fired steam generators that are required to monitor opacity emissions to monitor PM instead. The alternate monitoring requirement is allowed when condensed water vapor in the exhaust would not provide accurate determinations of emissions as a result of interference from condensed uncombined water vapor. The alternate monitoring plan is not effective until approved by EPA as a SIP revision. *See* 326 IAC 3–5–1(c)(2)(A)(iv).

Under this mechanism, Indiana has requested approval of an alternate monitoring plan for Alcoa Power Generating, Inc.-Alcoa Warrick Power Plant (Alcoa) in Warrick County. Indiana adopted the alternate monitoring plan on February 11, 2008, in Commissioner's Order #2008–01. This facility has installed a scrubber control device. The scrubber will add moisture to its exhaust which condenses as the stream cools. The condensation may cause unreliable readings from a COMS. A COMS measures opacity optically, so it cannot distinguish between light impairment caused by particulate and that caused by moisture. As the scrubber removes particulate, placing the COMS prior to the exhaust entering the scrubber could also incorrectly measure Alcoa's emissions.

Alcoa has requested that it be permitted to use alternative monitoring, as provided under 326 IAC 5–3–1(c)(2)(A)(iii). It will use a PM CEMS in place of the COMS. The PM CEMS is placed after the scrubber to measure the PM emissions emitted from the Alcoa facility. Proper calibration should allow the PM CEMS to provide accurate readings, even with moisture from the scrubber in the exhaust stream. The PM CEMS readings will be used to determine whether Alcoa is in compliance with its PM emission limits.

II. What is EPA's analysis of the revision?

The addition of 326 IAC 3–5–1 enhances Indiana's SIP because these continuous emission monitoring requirements are now applicable to a number of sources. This includes several source types meeting a size requirement (*e.g.,* fossil fuel-fired steam generators of greater than one hundred million British thermal units per hour heat input capacity). They also apply to facilities in Clark and Floyd Counties with the potential to emit at least 40 tons of nitrogen oxides (NO_X) per year that are located at sources with the potential to emit 100 tons per year or more of NO_X. Continuous monitoring is required on fossil-fired power plants, sulfuric acid plants, petroleum refineries, Portland cement plants, sewage sludge combustion facilities, and sources producing coke that meet the conditions in the rule. Section 1(c) of the rule specifies which pollutants each source type is to monitor. The continuous monitoring rules include the requirements for alternative monitoring provisions. EPA approval of the alternative monitoring plan is required by 326 IAC 5–3–1(c)(2)(A)(iv).

In the alternative monitoring plan approved by Indiana in Commissioner's Order #2008–01, Alcoa will monitor PM emissions in place of opacity. The visible emissions exiting the stack are primarily composed of PM. Visible emissions observations under 40 CFR part 60, appendix A, Method 9 are taken in the atmosphere after any moisture has condensed and left the plume. The COM at Alcoa, however, reads the opacity in the stack. The addition of a scrubber will remove pollutants from the exhaust, but will add moisture. This moisture condenses as the exhaust cools in the stack. This creates a higher opacity reading from the COM. Installing the COM to read the opacity before the scrubber would not give an accurate measurement of the facility's emissions because the COM would not reflect any emission reductions from the scrubber.

PM in the plume causes opacity, so PM and opacity readings can be used as reasonable substitutes for each other. The PM CEMS will be calibrated to provide accurate measurements even with moisture in the stack. The PM CEMS provides the particulate emissions from the facility. Knowing the emissions from the facility, Alcoa will be able to make adjustments or control device repairs should the emissions rise too high. This facility will average the PM CEMS data at time intervals specified in its permits. Alcoa is also required to monitor other pollutants and their operating parameters. Opacity should remain at acceptable levels if PM and the other pollutants remain in compliance of their standards. The alternate monitoring requirement removes the need to operate the COMS, but does not remove the opacity limits at the facility. Visible emissions observations in accordance with method 9 can still be made to confirm that the applicable opacity limits are being met.

III. What are the environmental effects of this action?

PM interferes with lung function when inhaled. Exposure to PM can cause heart and lung disease. Particulate matter also aggravates asthma. Airborne particulate is the main source of haze that causes a reduction in visibility. It also is deposited on the ground and in the water. This harms the environment by changing the nutrient and chemical balance.

This action only changes the monitoring requirements for Alcoa. All of the SIP emission limits remain in place.

IV. What action is EPA taking?

EPA is approving the addition of 326 IAC 3–5–1, continuous emissions monitoring requirements, and an alternative monitoring request in Indiana Commissioner's Order #2008–01 for a Warrick County source, Alcoa Power Generating, Inc. The rule adds continuous monitoring requirements to specified source types. Alcoa will operate a PM CEMS instead of a COMS. This is acceptable because moisture in the facility's exhaust stream could cause inaccurate opacity readings from a COMS. The continuous monitoring of particulate emissions is a reasonable substitute for continuous opacity monitoring in this case.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective February 26, 2010 without further notice unless we receive relevant

adverse written comments by January 27, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective February 26, 2010.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 13, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(192) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(192) On April 25, 2008, Indiana submitted regulations that incorporate its continuous emission monitoring requirements into its SIP. Indiana also submitted Commissioner's Orders that provide an alternative monitoring plan for a Warrick County source. The alternative monitoring requirements allow the use of a particulate matter continuous emissions monitoring system in place of a continuous opacity monitor.

(i) *Incorporation by reference.* (A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 3: Monitoring Requirements, Rule 5: Continuous Monitoring of Emissions, Section 1: Applicability; monitoring requirements for applicable pollutants. Filed with the Secretary of State on January 30, 1998, and effective on March 1, 1998. Published in 21 *Indiana Register* 2062–2079 on March 1, 1998. (B) Commissioner's Order #2008–01 as issued by the Indiana Department of Environmental Management on February 11, 2008.

[FR Doc. E9–30406 Filed 12–24–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[DA 09–2529]

FCC Announces Change in Filing Location for Paper Documents

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes nomenclature changes to the Commission's rules and is necessary in order to update addresses pertaining to the filing location for documents received by hand-delivered and/or messenger-delivered paper filings for

the Commission's Secretary at the FCC Headquarters. The Commission wants to ensure that all documents are received at the new location by the effective date, and make sure that customers are provided with proper instructions before documents are submitted to the Commission.

DATES: Effective December 28, 2009.

FOR FURTHER INFORMATION CONTACT: Please address any questions concerning this document to Ginger Weasenforth at *ginger.weasenforth@fcc.gov* (202) 418–0330 or Geraldine Taylor at *geraldine.taylor@fcc.gov* (202) 418–0305.

SUPPLEMENTARY INFORMATION: The Commission released a document on December 3, 2009, announcing the new filing location for paper documents effective December 28, 2009. The Commission's contractor will begin receiving hand-delivered and/or messenger-delivered paper filings for the Commission's Secretary at the FCC Headquarters building located at 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

- The filing hours will be Monday through Friday, 8 a.m. to 7 p.m.
- This is the ONLY location where hand-delivered or messenger-delivered paper filings for the Commission's Secretary will be accepted. Accordingly, the Commission will close the filing location at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.
- Originals and copies of each official filing must continue to be held together with rubber bands or fasteners. And as usual, ''stamp and return'' copies will be provided as long as they accompany each individual filing. ALL FILINGS MUST BE SUBMITTED WITHOUT ENVELOPES. *See http://www.fcc.gov/osec/* for further information on filing instructions.
- Documents intended to be received by specific staff members within the Bureaus and Offices must be clearly labeled on the first page of the document or with a cover sheet indicating the destination. As appropriate, originals and copies should be held together with rubber bands or fasteners.
- Documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail) must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- All USPS First Class Mail, Express Mail and Priority Mail should continue to be addressed to FCC Headquarters at 445 12th Street, SW., Washington, DC 20554. *See http://www.fcc.gov/osec/guidelines.html* for further instruction on FCC filing addresses.

As the Commission continues to balance its efforts to be accessible to its customers with the need for heightened security measures, we encourage our customers to take full advantage of the Commission's Electronic Comment Filing System to facilitate the filing of applicable documents.

This amendment is made pursuant to § 0.231(b) of the Commission's rules, 47 CFR 0231. The Federal Communications Commission considers the rule amendments as a matter of agency practice and procedure; therefore, compliance with the notice and comment and effective date provision of the Administrative Procedure Act is not required. Therefore, the Commission will not send a copy of this final rule pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 0 and 1

Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 1 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

§ 0.401 [Amended]

■ 2. In 47 CFR 0.401(a) (1) (ii) remove the words ''236 Massachusetts Avenue, NE., Washington, DC 20002'' and add in their place, the words ''445 12th Street, SW., Washington, DC 20554''.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.* 47 U.S.C. 151, 154(j), 160, 201, 225, and 303.

§ 1.4 [Amended]

■ 4. In 47 CFR 1.4(f) remove the words ''236 Massachusetts Ave., NE., Washington, DC 20002'' and add in their place, the words ''445 12th Street, SW., Washington, DC 20554''.

§ 1.773 [Amended]

■ 5. In 47 CFR 1.773(a) (4) and (b) (3) remove the words ''236 Massachusetts Ave., NE., Washington, DC 20002'' and add in their place, the words ''445 12th Street, SW., Washington, DC 20554''.

§ 1.774 [Amended]

■ 6. In 47 CFR 1.774(e) (2) (ii) remove the words ''236 Massachusetts Ave., NE., Washington, DC 20002'' and add in their place, the words ''445 12th Street, SW., Washington, DC 20554''.

§ 1.939 [Amended]

■ 7. In 47 CFR 1.939(b) remove the words ''236 Massachusetts Ave., NE., Washington, DC 20002'' and add in their place, the words ''445 12th Street, SW., Washington, DC 20554''.

[FR Doc. E9–30515 Filed 12–24–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 74, No. 247

Monday, December 28, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–9098; File No. S7–30–09]

RIN 3235–AK29

Revisions To Rule 163

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to Rule 163(c) under the Securities Act of 1933 that would allow a well-known seasoned issuer to authorize an underwriter or dealer to act as its agent or representative in communicating about offerings of the issuer's securities prior to the filing of a registration statement. We believe that the proposed amendments should further facilitate capital formation by well-known seasoned issuers by removing certain impediments to issuer communications with broader groups of potential investors regarding offerings of securities.

DATES: Comments must be received on or before January 27, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–30–09 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–30–09. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Ted Yu, Special Counsel, Office of Chief Counsel, at (202) 551–3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–4561.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 163(c) [1] under the Securities Act.[2]

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I. Background

In 2005, we adopted various modifications to the registration, communications and offering processes under the Securities Act.[3] As part of those modifications, we liberalized the communications rules for a new category of issuers, called ''well-known seasoned issuers'' (''WKSIs''), so they would not be unnecessarily constrained in their capital formation activities while retaining important investor rights and remedies under the Securities Act. A WKSI is an issuer that meets the registrant requirements of Form S–3 or Form F–3; has at least $700 million in worldwide market value of outstanding voting and non-voting common equity held by non-affiliates (or has issued, for cash, within the last three years at least $1 billion aggregate principal amount of non-convertible securities through primary offerings registered under the Securities Act); and is not an ''ineligible issuer,'' as defined in our rules.[4] We permitted these issuers to benefit the most from the liberalization of our offering and communication rules because they have a reporting history under the Exchange Act [5] and are presumptively the most widely-followed issuers in the marketplace.[6]

We adopted Rule 163 under the Securities Act as part of our 2005 reforms.[7] Pursuant to Rule 163, WKSIs can engage in unrestricted oral and written offers [8] before a registration statement is filed without violating the ''gun-jumping'' provisions of the Securities Act.[9] Rule 163 exempts an offer made ''by or on behalf of'' a WKSI from the prohibition in Section 5(c) of

[1] 17 CFR 230.163(c).

[2] 15 U.S.C. 77a *et seq.*

[3] *See* Securities Offering Reform, Securities Act Release No. 8591 (Aug. 3, 2005) [70 FR 44721] (''Securities Offering Reform Adopting Release'').

[4] *See* Securities Act Rule 405 [17 CFR 230.405].

[5] 15 U.S.C. 78a *et seq.*

[6] *See* Securities Offering Reform Adopting Release, *supra* note 3, at Section II.A.

[7] 17 CFR 230.163.

[8] Securities Act Section 2(a)(3) [15 U.S.C. 77b(a)(3)] defines ''offer'' as any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The term ''offer'' has been interpreted broadly and goes beyond the common law concept of an offer. *See Diskin* v. *Lomasney & Co.,* 452 F.2d 871 (2d. Cir. 1971); *SEC* v. *Cavanaugh,* 1 F. Supp. 2d 337 (S.D.N.Y. 1998).

[9] As we described in the Securities Offering Reform Adopting Release, the Securities Act restricts the types of offering communications that issuers or other parties subject to the Act's provisions (such as underwriters) may use during a registered public offering. The nature of the restrictions depends on the period during which the communications are to occur. Violations of these restrictions generally are referred to as ''gun jumping.'' *See* Securities Offering Reform Adopting Release, *supra* note 3, at Section III.A.

the Securities Act[10] on offers to sell, offers for sale, or offers to buy an issuer's securities before the filing of a registration statement, so long as the conditions of the rule are met. Under the current rule, a communication is deemed to be ''by or on behalf of'' a WKSI if the issuer or agent or representative of the issuer, other than an offering participant who is an underwriter or dealer, authorizes or approves the communication before it is made.[11]

II. Purpose of the Proposed Amendments to Securities Act Rule 163(c)

Rule 163 was adopted with the purpose of liberalizing the communication rules for WKSIs so that they could engage in oral and written communications, subject to certain enumerated conditions, before the filing of a registration statement for the offered securities. We believed that this rule, along with other modifications to the registration and offering process under the Securities Act adopted at the same time, would encourage more issuers to conduct their offerings on a registered basis, thereby enhancing investor protection.[12] At the time we adopted the rule and the automatic shelf registration process,[13] we expected that a WKSI would usually have a shelf registration statement on file that it could use for any of its registered offerings—an expectation shared by some commenters.[14] Accordingly, we expected that it would be unusual for WKSIs to make offers prior to the filing of a registration statement in reliance on the Rule 163 exemption.[15] We have since learned, however, that many WKSIs have not filed automatic shelf registration statements or that the automatic shelf registration statements they have filed may not register all of the types of securities that they may want to offer.[16] If a WKSI wants to make offers before a registration statement is filed, it must rely on the Rule 163 exemption, and many WKSIs do not have registration statements on file.[17] As noted above, the Rule 163 exemption is not available for communications made by an offering participant that is an underwriter or dealer.

Some methods used in capital raising transactions have highlighted certain impediments in Rule 163 to a WKSI's communications with broader groups of potential investors regarding offerings of the issuer's securities.[18] Specifically, WKSIs may want to assess the level of investor interest in their securities before filing a registration statement (or a post-effective amendment to an already-filed automatic shelf registration statement)[19] for the offered securities. Although Rule 163 currently allows these issuers to communicate directly with potential investors to determine their interest in purchasing securities without violating the ''gun-jumping'' provisions of the Securities Act, we understand that many of these issuers either do not have sufficient knowledge about potential investors to contact them directly or prefer not to contact investors directly out of concern that any such contact could itself constitute and reveal material, non-public information about the issuers' capital-raising plans without the opportunity to first obtain a confidentiality agreement. Consequently, these issuers wish to be able to engage underwriters or dealers to approach their broader base of institutional clients on the issuers' behalf to ascertain their clients' interest in investing in the issuers' securities before filing a registration statement.[20] Because Rule 163 does not permit an offering participant who is an underwriter or dealer to make communications, or to authorize or approve communications, as an agent or representative of a WKSI, a WKSI without a registration statement on file or without having particular classes of securities included in the registration statement cannot engage underwriters or dealers to have discussions with potential investors on its behalf. This reduces the benefits of our earlier reforms for issuers considering registered offerings and could lead such issuers to conduct unregistered offerings, with the resultant loss of the rights and remedies available under the Securities Act to investors in registered offerings.

To address this concern, we are proposing to amend the ''by and on behalf of an issuer'' definition in Rule 163(c) so that, under certain circumstances, underwriters or dealers can be agents or representatives of

[10] 15 U.S.C. 77e(c).

[11] *See* Rule 163(c) [17 CFR 230.163(c)].

[12] *See* Securities Offering Reform Adopting Release, 70 FR at 44777 (''We hope that providing these automatic shelf issuers more flexibility for their registered offerings, coupled with the liberalized communications rules we are adopting, will encourage these issuers to raise their necessary capital through the registration process'').

[13] Under the automatic shelf registration process, eligible WKSIs can register unspecified amounts of different specified types of securities using Form S–3 or Form F–3 registration statements that are effective upon filing.

[14] *See* letter from the Committee on Federal Regulation of Securities of the American Bar Association's Section of Business Law. *http://www.sec.gov/rules/proposed/s73804/dljohnson021105.pdf.*

[15] *See* Securities Offering Reform Adopting Release, *supra* note 3, at Section III.D.2.b.ii.

[16] According to the data analyzed by the staff in our Office of Economic Analysis, 50% of the 2,273 registrants that indicated that they were WKSIs as of the end of their 2006 or 2007 fiscal years have filed an automatic shelf registration statement on either Form S–3 or F–3. At the time we proposed the modifications to the registration, communication, and offering processes under the Securities Act, we recognized that some issuers may have concerns regarding possible market overhang effect and solicited comments on whether the automatic shelf registration procedure should be made mandatory in order to eliminate concerns over any such effect. *See* Securities Offering Reform, Release No. 33–8501 (Nov. 14, 2004) [69 FR 67392] (''Securities Offering Reform Proposing Release'') at Section V.B.2. Commenters believed that use of the automatic shelf registration process should be optional. *See, e.g.,* letter from the Committee on Federal Regulation of Securities of the American Bar Association's Section of Business Law. As we noted in the Securities Offering Reform Adopting Release, we did not mandate the use of the automatic shelf registration process by WKSIs so that issuers would have the flexibility to file a registration statement on any form for which they are eligible and, if they wished, delay the effective date of their registration statements. *See* Securities Offering Reform Adopting Release, *supra* note 3, at Section V.B.2.a.ii.

[17] If a WKSI had filed a registration statement covering the securities being offered, then it would not need the exemption because Securities Act Section 5(c)'s prohibitions on offers being made before a registration statement has been filed would no longer apply to the securities included in the registration statement.

[18] *See, e.g.,* Lynn Cowan, *Follow-On Deals Take a Night Shift—Increasing Number of Companies Work After-Hours to Line Up Orders,* Wall St. J., Apr. 27, 2009 (''In a trading environment that can still be volatile, bankers and companies don't want to follow the traditional practice of marketing a deal over several days and then gauging investor interest. Instead, they are reaching out to large institutional investors such as mutual funds to make sure there's sizable interest, swiftly building a book of orders after the closing bell, and pricing before the market reopens the next day.''); Lynn Cowan, *''Wall Crossings'' Provide Fund-Raising Edge,* Wall St. J., Dec. 29, 2008 (''In a wall crossing, institutional investors are lined up to buy substantial chunks of new stock ahead of a public sale. In order to participate in what is essentially a private placement, those investors sign a confidentiality agreement that lets them cross the wall and become insiders. In exchange for gaining access to inside information, they are barred from trading in the stock until the public end of the deal is done. They gain no price advantage for signing on early.'').

[19] Under Securities Act Rule 413(b), a WKSI can add new classes of securities or securities of an eligible subsidiary to an automatic shelf registration statement at any time before the sale of those securities. In order to add new classes of securities, an issuer must file a post-effective amendment, which will be immediately effective, to register an unspecified amount of the new class of securities.

[20] We understand that underwriters or dealers generally do not reveal the identity of the issuer to potential investors before securing agreements to retain the confidentiality of the information until it is publicly disclosed or is no longer material, non-public information. *See, e.g.,* Cowan, *''Wall Crossings'' Provide Fund-Raising Edge, supra* note 18. See also the discussion in Section III below on the applicability of Regulation FD to communications made in reliance on Rule 163.

WKSIs under the rule.[21] By preventing underwriters or dealers from acting on behalf of issuers, the current definition may be causing unnecessary impediments to the ability of WKSIs to communicate with a broader group of potential investors regarding the possibility and terms of securities offerings by the issuers. If adopted, the proposed amendments will enable WKSIs to better gauge the level of interest in the market for an offering and explore possible terms for such an offering before filing a registration statement or including the securities in the registration statement through a post-effective amendment. Allowing authorized underwriters or dealers to be agents or representatives of a WKSI will provide these issuers with access to the underwriters' or dealers' existing networks of investors to assess market interest in the issuer's securities.

The proposed amendments would remove impediments from the ability of WKSIs to raise capital through registered offerings rather than through private offerings which, as we previously recognized, often require issuers to offer liquidity discounts to potential investors due to the corresponding resale restrictions imposed on the securities sold.[22] We also believe that investors would benefit from our existing regulatory framework of specific disclosure requirements that apply to registered offerings,[23] from greater liquidity for the acquired securities because they will not be acquired in private transactions with corresponding resale restrictions,[24] and from important rights and remedies under the Securities Act.[25] We believe the proposed amendments are consistent with our traditional recognition of the ''broad remedial purposes'' of the Securities Act and the underlying ''public policy which strongly supports registration.''[26]

III. Proposed Amendments to Securities Act Rule 163(c)

We are proposing to amend Rule 163(c) to provide that an underwriter or dealer could be an agent or representative of a WKSI under Rule 163 if the following conditions are satisfied:

- The underwriter or dealer receives written authorization from the WKSI to act as its agent or representative before making any communication on its behalf;[27]
- The issuer authorizes or approves any written or oral communication before it is made by an authorized underwriter or dealer as agent or representative of the issuer;[28] and
- Any authorized underwriter or dealer that has made any authorized communication on behalf of the issuer in reliance on Rule 163 is identified in any prospectus contained in the registration statement that is filed for the offering to which the communication relates.[29]

All other provisions of Rule 163 would continue to apply, including that:

- All communications made by or on behalf of the issuer and in reliance on Rule 163 would continue to be subject to Regulation FD;[30]
- Every written communication that is an offer made in reliance on the Rule 163 exemption would contain substantially the legend required by the rule;[31] and
- Every written communication that is an offer made in reliance on the Rule 163 exemption would be filed with the Commission as a free writing prospectus when the registration statement, or amendment to the registration statement, is filed.[32]

We believe that the proposed expansion of Rule 163 to permit authorized underwriters and dealers to communicate on behalf of a WKSI would enable the issuer to communicate with a broader group of potential investors in a manner that would not adversely affect the market for the issuer's securities. This proposed expansion also would be in the interest of investors as it would allow underwriters or dealers acting on behalf of an issuer to communicate directly with investors. If an issuer decides to sell securities pursuant to a registration statement after its authorized underwriter or dealer determines that there is sufficient interest, investors would have the same rights and remedies as any other investor in a registered offering under the Securities Act.

Under the proposed amendments to Rule 163, the first condition is that the underwriter or dealer must receive written authorization from the issuer to act as its agent or representative before engaging in any communication on behalf of the issuer in reliance on the proposed amended rule.[33] The proposed amendments are for the limited purpose of enabling issuers to authorize underwriters or dealers to approach potential investors on their behalf regarding a possible offering of the issuers' securities.[34] We are not proposing to amend the rule to permit unrestricted communications by any market participant. We do not believe an underwriter or dealer should be able

[21] We are proposing to amend the ''by or on behalf of'' definition solely for purposes of Rule 163,

which, by its terms, is available only to WKSIs.

[22] *See* Securities Offering Reform Proposing Release, *supra* note 16, at Section XI.C.3.

[23] *See, e.g.,* Regulation S–K [17 CFR 229.10 *et seq*.].

[24] We have previously recognized that securities sold pursuant to registration statements generally enjoy more liquid markets than unregistered securities. *See, e.g.,* Securities Offering Reform Proposing Release, *supra* note 16, at Section XI.C.3.

[25] While communications made pursuant to Rule 163 are exempt from the prohibitions of Securities Act Section 5(c), they are still considered offers and, therefore, subject to liability provisions applicable to such offers. These provisions include Securities Act Section 12(a)(2) [15 U.S.C. 77*l*(a)(2)], Securities Act Section 17(a) [15 U.S.C. 77q(a)], Exchange Act Section 10(b) [15 U.S.C. 78j(b)], and Exchange Act Rule 10b–5. In addition, written communications made in reliance on Rule 163 must be filed as free writing prospectuses when the related registration statement is filed, and will be subject to liability as such.

[26] *See* Notice of Adoption of Rules 145 and 153A, Prospective Rescission of Rule 133, Amendment of Form S–14 under the Securities Act of 1933, and Amendment of Rules 14a–2 and 14c–5 under the Securities Act of 1934, Securities Act Release No. 5316 (Oct. 6, 1972) [37 FR 23631]; Notice of Adoption of Rule 144 Relating to the Definition of the Terms ''Underwriter'' in Sections 4(1) and 2(11) and ''Brokers' Transactions'' in Section 4(4) of the Securities Act of 1933, Adoption of Form 144, and Rescission of Rules 154 and 155 under that Act, Securities Act Release No. 5223 (Jan. 11, 1972) [37 FR 591].

[27] *See* proposed Rule 163(c)(1).

[28] *See* proposed Rule 163(c)(2). One way that an issuer could satisfy this condition is to approve the contents of the information that will be conveyed by the authorized underwriter or dealer to potential investors through oral communications.

[29] *See* proposed Rule 163(c)(3).

[30] Rule 163(e) [17 CFR 230.163(e)]; Regulation FD [17 CFR 243.100 *et seq*.]. We note that the amendments we are proposing today do not affect any other provision of existing Rule 163, including the continued applicability of Regulation FD to communications made in reliance on the exemption. As discussed below, communications made in reliance on Rule 163 are not considered to be in connection with a registered securities offering for purposes of the exclusion from Regulation FD.

[31] Rule 163(b)(1) [17 CFR 230.163(b)(1)]. Under the proposed amendments, issuers or their agents or representatives would continue to have the ability under Rule 163(b)(1) to ''cure'' a failure to include the required legend in any written communication made in reliance on the exemption.

[32] As is currently the case, the filing condition of Rule 163(d) would apply only if and when a registration statement, or an amendment to the registration statement, is filed. Accordingly, if no such registration statement is filed, a free writing prospectus used pursuant to Rule 163 does not have to be filed. Issuers or their agents or representatives would continue to have the ability under Rule 163(b)(2) to ''cure'' a failure to meet the filing condition when making any written communication in reliance on the Rule 163 exemption.

[33] *See* proposed Rule 163(c)(1).

[34] As we noted at the time we liberalized the communication regime for WKSIs, we believe that communications made by WKSIs have less potential for conditioning the market for the securities to be sold in a registered offering because of the market's familiarity with such large, more seasoned issuers and the ongoing market following of their activities. *See* Securities Offering Reform Adopting Release, *supra* note 3, at Section III.C.

to rely upon Rule 163, without prior authorization from the issuer, to gauge interest in the market for an issuer's securities and then present the issuer with an unsolicited proposal for an offering of that class of securities. Such activities would go beyond the limited purpose of the proposed amendments to Rule 163. By requiring that the underwriter or dealer receive written authorization before making pre-filing offers on behalf of the issuer in reliance on Rule 163, the proposed amendments require that the issuer be involved with any communications made by the underwriters or dealers in reliance on Rule 163.[35]

The second condition of the proposed amended rule is that the issuer must authorize or approve any written or oral communication before it is made by an authorized underwriter or dealer.[36] Any written or oral communication made by an authorized underwriter or dealer under the proposed amended Rule 163(c) would be considered an issuer communication. Any written communication that is approved or authorized by the issuer and made pursuant to the proposed amended rule on behalf of the issuer would need to be filed as a free writing prospectus when a registration statement for the offering is filed.[37] An oral communication made by an authorized underwriter or dealer pursuant to the proposed amended rule would not be subject to a filing requirement.

The proposed rule amendment is not intended to permit communications authorized by persons other than the WKSI. Thus, while the proposed amended Rule 163(c) would permit underwriters and dealers to act as the issuer's agents or representatives for purposes of making a communication, they would not be permitted, in turn, to authorize or approve a communication to be made by another person.

We emphasize that the amendments that we are proposing today do not change the applicability of Regulation FD to communications made in reliance on Rule 163. As is the case today, communications made in reliance on the proposed amended rule would not be considered to be in connection with a registered securities offering for purposes of the exclusion from Regulation FD.[38] Therefore, WKSIs would need to continue to comply with the provisions of Regulation FD with regard to any communications made pursuant to proposed amended Rule 163 to which Regulation FD would apply (including pre-filing communications made on behalf of the issuer by an authorized underwriter or dealer). If an authorized underwriter or dealer acting on behalf of an issuer desires to communicate material non-public information[39] in reliance on proposed amended Rule 163 to persons enumerated in Regulation FD,[40] the issuer, or the underwriter or dealer acting on its behalf, would first need to obtain a confidentiality agreement from the enumerated persons or the issuer would need to publicly disclose the information in the manner[41] and within the timeframe set forth in Regulation FD.[42] Moreover, any misuse of the information for trading by any person subject to a confidentiality agreement would be covered under either the ''temporary insider'' or the misappropriation theory of insider trading.[43]

The third condition in proposed amended Rule 163(c) is that an authorized underwriter or dealer who makes a communication on behalf of a WKSI in reliance on Rule 163 must be identified in the prospectus contained in the registration statement for the offering of the issuer's securities related to the communication.[44] This identification would provide investors with information to supplement disclosure about the plan of distribution of the WKSI's securities.[45]

Request for Comment

- We are soliciting comment on all conditions of the proposed amendments to Rule 163(c).
- Should an underwriter or dealer be required to obtain written authorization from the issuer to act as its agent in order to make offers pursuant to proposed amended Rule 163(c)? If not, why?
- Should the issuer be required to authorize or approve any written or oral communications before it is made by an underwriter or dealer acting as its agent?
- Should any written communications made by such authorized underwriters or dealers be required to be filed as any other issuer free writing prospectus under Rule 163? If not, why?
- What effect, if any, would the proposed amendments to Rule 163 have on the timing of the subsequent registered offering and what effect would such timing have on the ability of other investors in the registered offering, such as those investors who may not be approached until after the registration statement has been filed, to evaluate the offering?
- To what extent would the proposed amendments to Rule 163 enable WKSIs to reach a broader group of investors and affect their ability to raise capital

[35] We note that the requirement for prior written authorization in proposed amended Rule 163(c) is not intended to limit or otherwise affect the existing ability of an underwriter or dealer that is not acting on behalf of an issuer from making ''reverse inquiry'' offers in registered offerings. Under the ''reverse inquiry'' process, which is commonly used in medium-term note programs, an investor may be allowed to purchase securities from the issuer through an underwriter or dealer that is not designated in the prospectus as the issuer's agent by having such underwriter approach the issuer with an interest from the investor. *See* Joseph McLaughlin and Charles J. Johnson, Jr., *Corporate Finance and the Securities Laws* (4th ed. 2006). If the reverse inquiry process is used in offerings for which the issuer has already filed a registration statement, the requirement in proposed Rule 163(c)(1) for prior written authorization should not affect reverse inquiry offers since Section 5(c) of the Securities Act permits offers to be made after the filing of a registration statement.

[36] *See* proposed Rule 163(c)(2).

[37] Rule 163(b)(2) [17 CFR 230.163(b)(2)].

[38] Rule 163(e); Exchange Act Rule 100(b)(2)(iv) [17 CFR 243.100(b)(2)(iv)].

[39] When we adopted Regulation FD, we recognized that, while not necessarily per se material, ''events regarding the issuer's securities,'' such as ''public or private sales of additional securities,'' were one of the types of information or events that should be reviewed carefully to determine whether they are material. *See* Selective Disclosure and Insider Trading, Release No. 33–7881 (Aug. 15, 2000) [65 FR 51716] (''Regulation FD Adopting Release'') at Section II.B.2.

[40] Rule 100(b)(1) [17 CFR 243.100(b)(1)]. Regulation FD provides that when an issuer, or person acting on its behalf, discloses material non-public information to certain enumerated persons (in general, securities market professionals and holders of the issuer's securities who may trade on the basis of the information), it must make public disclosure of that information. *See* Regulation FD Adopting Release, *supra* note 39, at Section I.

[41] Under Regulation FD, the required public disclosure may be made by filing or furnishing a Form 8–K, or by another method or combination of methods that is reasonably designed to affect broad non-exclusionary distribution of the information to the public. *See* Exchange Act Rule 101(e) [17 CFR 243.101(e)].

[42] The timing of the required public disclosure depends on whether the selective disclosure of material non-public information was intentional or non-intentional. For an intentional selective disclosure, the issuer must make public disclosure simultaneously; for a non-intentional disclosure, the issuer must make public disclosure promptly. *See* Exchange Act Rule 100(a) [17 CFR 243.100(a)].

[43] *See* Regulation FD Adopting Release, *supra* note 39, at Section II.B.1.a.

[44] *See* proposed Rule 163(c)(3).

[45] *See* Item 508 of Regulation S–K [17 CFR 229.508] and Securities Act Rule 430B [17 CFR 230.430B]. Item 508 of Regulation S–K requires the identification of the underwriters through which the securities are offered and certain disclosures regarding the identified underwriters, such as the nature of any material relationships between the underwriters and the issuer as well as the nature and amount of underwriter compensation. Underwriters for securities offered pursuant to a registration statement are subject to Section 11 liability for untrue statements of material facts or omissions of material facts required to be included in a registration statement or necessary to make the statements in the registration statement not misleading at the time the registration statement became effective.

through registered offerings? Are there any other modifications that should be made to the conditions of Rule 163 that may facilitate the ability of WKSIs to raise capital with appropriate protections? What other effects, if any, would the proposed amendments have on the ability of WKSIs to raise capital? Would the proposed amendments have any effect on the ability of issuers other than WKSIs to raise capital? Please explain in detail and provide supporting empirical data.

- What are the reasons that WKSIs may not have filed automatic shelf registration statements or included certain classes of securities on filed automatic shelf registration statements? How would the proposed amendments to Rule 163 affect an issuer's decision to file an automatic shelf registration statement? Please provide empirical data to the extent available.
- Should we limit the types of investors that an authorized underwriter or dealer could approach under proposed amended Rule 163, such as to qualified institutional buyers, as defined in Securities Act Rule 144A(a)(1),[46] or to other types of investors who may not need the protections afforded by the Securities Act's registration provisions?[47] If so, why?
- Should an underwriter or dealer that made any authorized communications on behalf of an issuer in reliance on the proposed amended Rule 163 be required to be identified in the prospectus contained in the registration statement that is filed for the offering related to the communications?

IV. General Request for Comments

We request and encourage any interested person to submit comments regarding:

- The proposed rule changes that are the subject of this release;
- Additional or different changes; or
- Other matters that may have an effect on the proposal contained in this release.

We request comment from the point of view of registrants, investors and other users of information who may be affected by the proposed rule changes. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

[46] 17 CFR 230.144A(a)(1).

[47] *See* The Resale of Restricted Securities; Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145, Securities Act Release No. 6806 (Oct. 25, 1988) [53 FR 33147].

V. Paperwork Reduction Act

A. Background

Our proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[48] We are submitting these to the Office of Management and Budget (OMB) for review in accordance with the PRA.[49] The title for the information collection is ''Rule 163 (17 CFR 230.163)(OMB Control No. 3235–0619).'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number. The information collection requirements related to proposed amendments to Rule 163(c) would apply only to WKSIs and authorized offering participants choosing to rely on the proposed amended rule. Specifically, any free writing prospectus used by a WKSI or by an authorized offering participant would have to be filed and be publicly available on the EDGAR system if and when the WKSI files a registration statement (or a post-effective amendment to an automatic shelf registration statement) to cover the securities offered pursuant to the proposed amended rule. Although WKSIs would not be required to engage offering participants to make authorized communications, if they did, the information collection requirement would be mandatory.

The estimates of reporting and cost burdens provided in this PRA analysis address the time, effort and financial resources necessary to provide the proposed collections of information and are not intended to represent the full economic cost of complying with the proposal.

B. Summary of Information Collections

The proposed amendments to Rule 163(c), if adopted, would revise the ''by and on behalf of an issuer'' definition used in the rule so that, under certain circumstances, underwriters or dealers could be agents or representatives of WKSIs and communicate on behalf of the issuers before a registration statement (or a post-effective amendment to an automatic shelf registration statement) covering the offered securities has been filed. The proposal could increase the number of free writing prospectuses filed pursuant to Rule 163 as a result of the WKSIs' new ability to engage underwriters or dealers to make communications, which, if written, would be free writing prospectuses, on their behalf.

One of the conditions of the proposed amendments to Rule 163(c) is the identification of any authorized underwriters or dealers that made communications in reliance on the rule in the prospectus contained in the registration statement (or post-effective amendment to an automatic shelf registration statement) filed for the offered securities. This proposed condition does not impose a new disclosure requirement because an authorized underwriter or dealer that made a communication on behalf of a WKSI in reliance on the proposed amended rule would generally be an underwriter or dealer for the offering related to that communication and would, therefore, already be required to be identified under Item 508 of Regulation S–K, regardless of the proposed condition.

C. Paperwork Reduction Act Burden Estimates

At the time we adopted Rule 163, we estimated that most WKSIs would have an automatic shelf registration statement on file and would therefore not rely on the exemption provided in the rule. Accordingly, we estimated that 53 free writing prospectuses would be filed under Rule 163 per year and that issuers would spend 13.25 hours per year on such filings.[50] We have since learned that many WKSIs have not filed automatic shelf registration statements; the staff estimates that only 50% of the 2,273 registrants that were WKSIs as of the end of their 2006 or 2007 fiscal years have filed an automatic shelf registration statement on either Form S–3 or F–3. Therefore, we believe it is appropriate to update our PRA estimates of the costs and burdens imposed by the collection of information requirements of the proposed amended Rule 163. For the free writing prospectus rules, as was the case when we proposed Rule 163,[51] we estimate that 25% of the burden of preparation is carried by the issuer internally and 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of

[48] 44 U.S.C. 3501 *et seq.*

[49] *See* 44 U.S.C. 3507 and 5 CFR 1320.11.

[50] *See* Securities Offering Reform Proposing Release, *supra* note 16, at Section X.C.2. The calculation for the incremental burden hours issuers would spend under Rule 163 was 13.25 hours (53 free writing prospectuses filed, multiplied by 0.25 hours per filing).

[51] *See* Securities Offering Reform Proposing Release, *supra* note 16, at Section X.C.

the burden carried by the issuer internally is reflected in hours.

The fact that many WKSIs do not have automatic shelf registration statements on file (or do not have the securities they propose to offer already included in their filed registration statements), along with our proposal to permit underwriters or dealers to make communications pursuant to Rule 163, may result in greater use of the Rule 163 exemption by issuers and potentially greater numbers of free writing prospectuses filed pursuant to the rule. However, since some communications made by underwriters or dealers in reliance on Rule 163 would be oral rather than written, and since an oral communication that is an offer need not be filed with the Commission as a free writing prospectus, the potential increase might be small. As a result of these two counteracting effects, we estimate for this analysis that the number of free writing prospectuses will double from our estimate at the time that Rule 163 was proposed. More specifically, we estimate that the incremental increase in the number of free writing prospectuses that may be filed pursuant to the proposed amended rule and number of incremental burden hours will be 53 free writing prospectuses and 13.25 hours per year, resulting in issuer personnel time of 3.3 hours and a cost of approximately $3,980 for the services of outside professionals. The following table illustrates the incremental annual compliance burden of the collection of information in hours and in cost for the proposed amendments to Rule 163:

	Incremental annual responses	Hours/form	Incremental burden	25% Issuer	75% Professional	$400 prof. cost
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.25	(E)=(C)*0.75	(F)=(E)*$400
Rule 163 filing	53	0.25	13.25	3.3	9.95	$3,980

D. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–30–09. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–30–09, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. Because the OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

VI. Cost Benefit Analysis

A. Background

We believe that the definition of ''by or on behalf of an issuer'' currently in Rule 163(c) may be causing unnecessary impediments to the ability of WKSIs to communicate with a broader group of potential investors about offerings of the issuers' securities by preventing underwriters or dealers from acting on behalf of such issuers. Further, the current definition may also be impeding potentially useful discourse with prospective investors regarding the possibility and terms of securities offerings by the issuers. Accordingly, we believe that it is appropriate to propose to amend the definition in Rule 163(c) so that, under certain circumstances, underwriters or dealers could be agents or representatives of WKSIs under Rule 163. We believe that the proposed amendments would enable WKSIs to better gauge the level of interest in the market for an offering and explore possible terms for such an offering before filing a registration statement (or a post-effective amendment to an already filed automatic shelf registration statement) covering the offered securities while retaining for investors important rights and remedies under the Securities Act.

B. Benefits

The purpose of the proposed amendments to Rule 163(c) is to allow authorized underwriters or dealers to communicate on behalf of WKSIs before a registration statement (or a post-effective amendment to an already filed automatic shelf registration statement) covering the offered securities has been filed. By removing impediments to the ability of WKSIs to communicate with a broader group of potential investors and access the capital markets through registered offerings, we believe that investors should benefit from our existing regulatory framework of specific disclosure requirements and remedies that apply in registered offerings and greater liquidity for the acquired securities because they will not be acquired in private transactions with corresponding resale restrictions. For WKSIs, the ability to engage offering participants who are underwriters or dealers for the purpose of communicating with a broader group of potential investors should allow greater access to capital through the use of the underwriters' or dealers' existing networks of investors and the increased flexibility in evaluating the possible terms of offerings.

The proposed amendments to Rule 163(c) would maintain the existing Securities Act liability scheme for communications made in reliance on the proposed amended rule and, because all communications made in reliance on proposed amended Rule 163 would be considered issuer communications regardless of whether they are made by an issuer or an authorized underwriter or dealer, the existing filing conditions in the rule would continue to apply to any written

communications made in reliance on the rule. We believe that investor protection is further enhanced by removing certain impediments that WKSIs face in reaching a broader group of prospective investors in their capital raising activities through registered offerings rather than private offerings, while retaining for such investors important rights and remedies under the Securities Act, including available remedies under Securities Act Sections 11 and Section 12(a)(2).[52]

C. Costs

The proposed amendments to Rule 163(c) may involve certain costs. To the extent that a communication made on behalf of a WKSI pursuant to the proposed amended rule is a written communication, it would be a free writing prospectus that the issuer would have to file as with any other written communication made in reliance on Rule 163. For purposes of the PRA, we estimate the incremental costs to be issuer personnel time of 3.3 hours and approximately $3,980 for the services of outside professionals. If the communications are made orally, however, there would be no significant incremental costs because such communications would not have to be transcribed and filed in written form.

Another cost that may arise from the proposed amendments to Rule 163(c) is a possible decrease in the number of automatic shelf registration statements filed by WKSIs prior to an offering. In adopting the rules for automatic shelf registration statements for WKSIs, we hoped to provide sufficient flexibility for WKSIs to encourage capital formation through the registration process. Expanding Rule 163(c) to allow WKSIs to engage underwriters and dealers to act as their agent or representative in communicating with a broader group of investors may result in WKSIs waiting to file automatic shelf registration statements until after they have gauged the market's interest in an immediate offering. This decision not to file a registration statement in advance of identifying the classes of securities to be sold may delay the dissemination to the market of certain information regarding the issuer and its plans, such as the possibility that the issuer is contemplating an immediate offering of those types of securities. We believe, however, that many WKSIs will still file automatic shelf registration statements, even if they have no plans for an immediate offering, to have the capacity to sell their registered securities on an immediate basis without having to wait for an automatic shelf registration statement to be filed.

To the extent that the proposed amended rule would encourage more WKSIs to file automatic shelf registration statements, these filings, as is the case today, would not be subject to review by the staff of the Division of Corporation Finance because they become effective automatically upon filing. Investors may lose the benefit of better disclosure prompted by staff review. These filers, however, would continue to be obligated to disclose, on an annual basis, written, unresolved staff comments on their periodic report disclosures that were issued more than 180 days prior to the fiscal year end covered by the report and that the issuer believes are material.

The proposed amendments to Rule 163 would enhance access to the capital markets for only WKSIs. As a result, it is possible that other issuers, smaller than WKSIs or ineligible to be WKSIs, may encounter a more competitive capital-raising environment if they attempt to solicit investments from the same class of potential investors as those targeted by the WKSIs.

As proposed, an issuer must authorize an underwriter or dealer in writing before the underwriter or dealer can make any communications pursuant to the proposed amended rule. Arranging for this authorization may result in additional costs for issuers and underwriters or dealers.

D. Request for Comment

We request comments on this cost-benefit analysis and any of the costs and benefits associated with the proposed amendments to Rule 163(c). We solicit quantitative data to assist with our assessment of the costs and benefits of the proposed rule amendments.

VII. Consideration of Promotion of Efficiency, Competition and Capital Formation

Securities Act Section 2(b)[53] requires 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 consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The proposed amendments to Rule 163(c) are intended to remove certain impediments to communications by or on behalf of WKSIs with a broader group of potential investors before filing a registration statement (or a post-effective amendment to an already-filed automatic shelf registration statement) covering the securities being offered. We anticipate the proposed rule amendments will enhance a WKSI's ability to identify and communicate with investors regarding potential investments with the issuer and, as a result, make the capital formation process more efficient for these issuers. WKSIs will benefit from their authorized underwriter's or dealer's existing networks of investors when assessing market interest in their securities offerings, thereby potentially increasing their access to capital and improving their ability to issue securities on favorable terms to the issuer.

The proposed amendments to Rule 163 would enhance access to the capital markets for only WKSIs. As a result, it is possible that other issuers may not have the same capital-raising efficiencies if they attempt to solicit investments from the same class of potential investors as those targeted by the WKSIs, potentially creating a competitive advantage for some WKSIs. As we discussed in the Securities Offering Reform Adopting Release, these potential effects are justified in order to ensure that investors have appropriate access to information about issuers of different sizes.[54]

We request comment on whether the proposed rule amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

VIII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act[55] requires the Commission to undertake a Regulatory Flexibility Analysis of the effect of its rules on small entities unless the Commission certifies that the rules do not have a significant economic impact on a substantial number of small entities. Securities Act Rule 157[56] defines an issuer to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year.

Pursuant to Section 605(b) of the Regulatory Flexibility Act,[57] the Commission hereby certifies that the proposed amendments to Rule 163(c), if

[52] 15 U.S.C. 77k and 77*l*(a)(2).

[53] 15 U.S.C. 77b(b).

[54] *See* Securities Offering Reform Adopting Release, *supra* note 3, at Section X.

[55] 5 U.S.C. 603(a).

[56] 17 CFR 240.0–10(a).

[57] 5 U.S.C. 605(b).

adopted, will not have a significant economic impact on a substantial number of small entities. Rule 163 is, by its terms, available only to WKSIs. We believe that few, if any, small entities will be able to meet the $700 million non-affiliate equity market capitalization threshold [58] or the $1 billion non-convertible securities issuance threshold [59] to be considered WKSIs. For this reason, the proposed rule amendments, if adopted, should not have a significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[60] a rule is ''major'' if it has resulted, or is likely to result, in:

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether the proposed amendments to Rule 163(c) would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on: (1) The potential effect on the U.S. economy on an annual basis; (2) any potential increase in costs or prices for consumers or individual industries; and (3) any potential effect on competition, investment, or innovation.

X. Statutory Authority—Text of the Proposed Amendments

We are proposing the amendments pursuant to Sections 7, 10, 19, and 28 of the Securities Act, as amended.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

[58] To satisfy this threshold, the worldwide market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates must be $700 million or more as of a date within 60 days of the determination date. *See* Securities Act Rule 405 [17 CFR 230.405]

[59] To satisfy this threshold, the issuer must have issued for cash more than an aggregate of $1 billion in non-convertible securities, other than common equity, through registered primary offerings over the prior three years. *See* Securities Act Rule 405 [17 CFR 230.405].

[60] 5 U.S.C. 801 *et seq.*

For the reasons set out in the preamble, we are proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.163 by revising paragraph (c) to read as follows:

§ 230.163 Exemption from section 5(c) of the Act for certain communications by or on behalf of well-known seasoned issuers.

* * * * *

(c) For purposes of this section, a communication is made by or on behalf of an issuer if the issuer or an agent or representative of the issuer, other than an offering participant who is an underwriter or dealer, authorizes or approves the communication before it is made. *Provided, however,* an offering participant who is an underwriter or dealer may be an agent or representative of the issuer for purposes of this section if:

(1) The underwriter or dealer receives written authorization from the issuer to act as its agent or representative prior to making any communication in reliance on this exemption;

(2) The issuer authorizes or approves any written or oral communication before it is made by an underwriter or dealer authorized pursuant to the provision of this section to act as agent or representative of the issuer; and

(3) Any underwriter or dealer authorized pursuant to the provision of this section that has made any communication authorized pursuant to the provision of this section is identified in the prospectus contained in the registration statement or amendment that may be filed for the offering of the issuer's securities related to the communication.

* * * * *

By the Commission.

Dated: December 18, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30589 Filed 12–24–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Areas and Danger Zones at Eglin Air Force Base, FL

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to revise several existing danger zone and restricted area regulations and to establish four new restricted areas within the Eglin Air Force Base (AFB) facilities and along the Eglin AFB facility shoreline in Florida. The Eglin AFB and Eglin Reservation span over 724 square miles with over 150 miles of waterway boundary. This amendment to the existing regulation is necessary to update their water boundary security plan to provide adequate protection to Eglin personnel and resources.

DATES: Written comments must be submitted on or before January 27, 2010.

ADDRESSES: You may submit comments, identified by docket number COE–2009–0056, by any of the following methods:

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

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2009–0056, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, *Attn:* CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2009–0056. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or

contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through 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, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC, at 202–761–4922 or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–1680.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities under Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is proposing to amend the regulations in 33 CFR part 334 by updating and clarifying several of the existing regulations and establishing four new restricted areas in Florida within the Eglin Air Force Base (AFB) facilities and along the facility shoreline, at Eglin Reservation. The Eglin AFB and Eglin Reservation span over 724 square miles with over 150 miles of waterway boundary. This amendment to the existing regulation is necessary to update their water boundary security plan to provide adequate protection to Eglin personnel and resources by providing the Commanding Officer, Eglin AFB with the authority to restrict passage of persons, watercraft and vessels in waters contiguous to this facility.

Procedural Requirements

a. *Review Under Executive Order 12866.* The proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). Unless information is obtained to the contrary during the comment period, the Corps expects that the proposed rule would have practically no economic impact on the public, and result in no anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. *Unfunded Mandates Act.* This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposed rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.700 to read as follows:

§ 334.700 Choctawhatchee Bay, aerial gunnery ranges, Air Armament Center, Eglin Air Force Base, Fla.

(a) *The danger zones.* (1) *Aerial gunnery range in west part of Choctawhatchee Bay.* The waters of Choctawhatchee Bay within an area bounded by a line connecting the following coordinates, excluding that part of the area included within the aerial gunnery range along the north shore of Choctawhatchee Bay as described in paragraph (a)(2) of this section: Commencing at the northeast shore point at latitude 30°28′09.11″ N, longitude 086°29′02.30″ W; thence to latitude 30°25′30″ N, longitude 086°21′30″ W; thence to latitude 30°23′34.72″ N, longitude 086°23′00.22″ W; then following the shoreline at the mean high water line to latitude 30°24′09.45″ N, longitude 086°25′00.08″ W; thence to the southwest shore point at latitude 30°27′54.18″ N, longitude 086°29′18.32″ W; then following the shoreline at the mean high waterline easterly to point of origin.

(2) *Aerial gunnery range along north shore of Choctawhatchee Bay.* The waters of Choctawhatchee Bay within an area bounded by a line connecting the following coordinates: Commencing at the northwest shore point at latitude 30°27′26″ N, longitude 086°25′30″ W; thence to latitude 30°26′00″ N, longitude 086°25′30″ W; thence to latitude 30°26′57″ N, longitude 086°20′35″ W; thence to latitude 30°26′12″ N, longitude 086°20′35″ W; thence to latitude 30°26′29″ N, longitude 086°15′00″ W; thence to the northeast shore point latitude 30°29′08.7″ N, longitude 086°15′00″ W; then following the shoreline at the mean high waterline easterly to point of origin.

(b) *The regulations.* (1) *Aerial gunnery range in west part of Choctawhatchee Bay.* The aerial gunnery range in the west part of Choctawhatchee Bay (as described in paragraph (a)(1) of this section) may be used by persons and watercraft except during periods when firing is conducted. Use of the area will be advertised in advance by Eglin Public Affairs. During periods of firing, traverse of this area shall not be denied to regular cargo-carrying or passenger-carrying vessels or tows proceeding on established routes. In case any such

vessel is within the area, the officer in charge of gunnery operations will cause the cessation or postponement of fire until the vessel has cleared that part of the area within the range of the weapons being used. The vessel shall proceed on its normal course and shall not delay its progress.

(2) *Aerial gunnery range along north shore of Choctawhatchee Bay.* No person, vessel or other craft shall enter or remain within the aerial gunnery range along the north shore of Choctawhatchee Bay (as described in paragraph (a)(2) of this section) during times the area is active. Activation of the area will be advertised in advance by Eglin Public Affairs.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished utilizing the Department of Defense Force Protection Condition (FPCON) System. From the lowest security level to the highest, Force Protection Conditions levels are titled Normal, Alpha, Bravo, Charlie and Delta.

3. Revise § 334.710 to read as follows:

§ 334.710 The Narrows and Gulf of Mexico adjacent to Santa Rosa Island, Headquarters Air Armament Center, Eglin Air Force Base, Fla.

(a) *The restricted area.* The waters of The Narrows and the Gulf of Mexico easterly of the periphery of a circular area five nautical miles in radius, centered at latitude 30°23′10.074″ N, longitude 086°48′25.433″ W (USC&GS Station Tuck 3), within the segment of a circle, three nautical miles in radius, centered at latitude 30°24′00″ N, longitude 086°41′47″ W.

(b) *The regulations.* The area will be used intermittently during daylight hours. During periods of use, entry into the area will be prohibited to all persons and navigation. Notifications will be via Eglin water patrol and published in local news media in advance.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin Air Force Base, Florida, and such agencies as he/she may designate.

4. Revise § 334.720 to read as follows:

§ 334.720 Gulf of Mexico, south from Choctawhatchee Bay; Missile test area.

(a) *The danger zone.* The waters of the Gulf of Mexico south from Choctawhatchee Bay within an area described as follows: Beginning at a point five nautical miles southeasterly from USC&GS Station Tuck 3, at latitude 30°23′10.074″ N, longitude 086°48′25.433″ W, three nautical miles offshore of Santa Rosa Island; thence easterly three nautical miles offshore and parallel to shore, to a point south of Apalachicola Bay, Florida at latitude 29°32′00″ N, longitude 085°00′00″ W; thence southeasterly to latitude 29°17′30″ N, longitude 084°40′00″ W; thence southwesterly to latitude 28°40′00″ N, longitude 084°49′00″ W; thence southeasterly to latitude 28°10′00″ N, longitude 084°30′00″ W; thence 270° true to longitude 086°48′00″ W; thence due north along longitude 086°48′00″ W to the intersection of the line with a circle of five nautical miles radius centered on USC&GS Station Tuck 3, at latitude 30°23′10.074″ N, longitude 086°48′25.433″ W, thence northeasterly along the arc of the circle to the point of beginning.

(b) *The regulations.* (1) The area will be used intermittently during daylight hours for a week or 10 days at a time. Firing will take place once or twice a day for periods ordinarily of not more than one hour. Advance notice of such firings will be published in local newspapers.

(2) During periods of firing, passage through the area will not be denied to cargo-carrying or passenger-carrying vessels or tows proceeding on established routes. In case any such vessel is within the danger zone, the officer in charge of firing operations will cause the cessation or postponement of fire until the vessel has cleared the portion of the danger area involved. The entire area involved will be under constant observation of both surface patrol vessels and air patrol planes prior to and during periods of firing and notice will be given to vessels and tows of intention to fire by buzzing low over the vessel, upon which signal vessels and tows shall proceed on their established course promptly and clear the area as soon as possible.

(3) All person and vessels, except those identified in paragraph (b)(2) of this section, will be warned to leave the immediate danger area during firing periods by surface patrol craft. Upon being so warned, such persons and vessels shall clear the area immediately. Such periods normally will not exceed two hours.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin Field, Florida, and such agencies as he/she may designate.

5. Revise § 334.730 to read as follows:

§ 334.730 Waters of Santa Rosa Sound and Gulf of Mexico adjacent to Santa Rosa Island, Armament Center, Eglin Air Force Base, Fla.

(a) *The areas.* (1) *The danger zone.* Waters of Santa Rosa Sound and Gulf of Mexico within a circle one nautical mile in radius, centered at latitude 30°23′10.074″ N, longitude 086°48′25.433″ W (USC&GS Station Tuck 3). The portion of the area in Santa Rosa Sound includes the Gulf Intracoastal Waterway between miles 209.6 and 211.4 from Harvey Lock, Louisiana.

(2) *The restricted areas.* (i) *Area 1.* The waters of Santa Rosa Sound and Gulf of Mexico surrounding the danger zone described in paragraph (a)(1) of this section, within a circle five nautical miles in radius centered at latitude 30°23′10.074″ N, longitude 086°48′25.433″ W (USC&GS Station Tuck 3). The portion of the area in Santa Rosa Sound includes the Gulf Intracoastal Waterway between miles 334.6 and 216.4 from Harvey Lock, Louisiana.

(ii) *Area 2. Santa Rosa Island, North Side.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°24′06.58″ N, longitude 086°40′25.00″ W; thence to latitude 30°24′08.08″ N, longitude 086°40′25.00″ W; then the line meanders irregularly, following the shoreline at a distance of 150 feet seaward from the mean high water line to a point at latitude 30°23′12.34″ N, longitude 086°50′57.62″ W, thence proceeding directly to a point on the shoreline at latitude 30°23′10.85″ N, longitude 086°50′57.62″ W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Eglin AFB.

(iii) *Area 3. Choctawhatchee Bay, North side—Hurlburt Field.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°24′28.30″ N, longitude 086°40′54.91″ W; thence to latitude 30°24′26.32″ N, longitude 086°40′54.91″ W; then the line meanders irregularly, following the shoreline at a distance of 200 feet seaward from the mean high water line to a point at latitude 30°24′28.80″ N, longitude 086°42′53.83″ W, thence proceeding directly to a point on the shoreline at latitude 30°24′30.79″ N, longitude 086°42′53.83″ W.

(b) *The regulations.* (1) *The danger zone.* Experimental test operations will be conducted by the U.S. Air Force within the danger zone on an intermittent basis. Such test operations shall not exceed one hour, and shall not occur more than twice weekly. During periods when experimental test operations are underway, no person, vessel or other watercraft shall enter or navigate the waters of the restricted area.

(2) *The restricted areas.* (i) No person, vessel or other watercraft shall enter the areas identified in paragraph (a)(2) of this section without permission of Eglin AFB or Hurlburt Field Commander or his/her authorized representative, except to navigate the Gulf Intracoastal Waterway. Such vessels and other watercraft shall confine their movements to the waters within the limits of the Intracoastal Waterway and shall make the passage as promptly as possible under normal vessel speed.

(ii) The areas identified in paragraph (a)(2) of this section are active 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin Air Force Base, Florida, and such agencies as he/she may designate.

6. Revise § 334.740 to read as follows:

§ 334.740 North Shore Choctawhatchee Bay, Eglin Air Force Base, Fla.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°28′59.90″ N, longitude 086°29′08.88″ W; thence to latitude 30°28′59.61″ N, longitude 086°29′01.81″ W; thence to latitude 30°29′08.01″ N, longitude 086°28′47.78″ W; then following the mean high water line at a distance of 1,000 feet to a point at latitude 30°26′48.60″ N, longitude 086°32′31.95″ W, thence proceeding directly to a point on the shoreline at latitude 30°26′53.58″ N, longitude 086°32′41.81″ W. The area also includes all contiguous inland navigable waters that lie within the land boundaries of Eglin AFB.

(b) *The regulations.* (1) With the exception of local, State, and Federal law enforcement entities, all persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the areas described in paragraph (a) of this section for any reason without the permission of the Commander, 96 Air Base Wing, Eglin AFB, and his/her authorized representative.

(2) The restriction in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* (1) The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, and such agencies as he/she may designate.

(2) Enforcement of the regulations in this section will be accomplished utilizing the Department of Defense Force Protection Condition (FPCON) System. From the lowest security level to the highest, Force Protection Conditions levels are titled Normal, Alpha, Bravo, Charlie and Delta.

7. Add § 334.742 to read as follows:

§ 334.742 Eglin Camp Pinchot, Fla., at Eglin Air Force Base, Fla.; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°28′18.68″ N, longitude 086°35′38.66″ W; thence to latitude 30°28′20.80″ N, longitude 086°35′36.25″ W; then the line meanders irregularly, following the shoreline at a distance of 300 feet seaward from the mean high water line to a point at latitude 30°28′06.02″ N, longitude 086°35′39.18″ W, thence proceeding directly to a point on the shoreline at latitude 30°28′07.47″ N, longitude 086°35′42.17″ W.

(b) *The regulations.* (1) No person or vessel shall enter the area without the permission of the Commander, Eglin Air Force Base, Florida, or his/her authorized representative.

(2) The restriction in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, and such agencies as he/she may designate.

8. Add § 334.744 to read as follows:

§ 334.744 Eglin Poquito Housing at Eglin Air Force Base, Fla.; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°27′11.68″ N, longitude 086°34′32.87″ W; thence to latitude 30°27′11.86″ N, longitude 086°34′34.59″ W; then the line meanders irregularly, following the shoreline at a distance of 150 feet seaward from the mean high water line to a point at latitude 30°27′31.25″ N, longitude 086°34′38.56″ W, thence proceeding directly to a point on the shoreline at latitude 30°27′34.07″ N, longitude 086°34′35.67″ W.

(b) *The regulations.* (1) No person or vessel shall enter the area without the permission of the Commander, Eglin Air Force Base, Florida, or his/her authorized representative.

(2) The restriction in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, and such agencies as he/she may designate.

9. Add § 334.746 to read as follows:

§ 334.746 US Coast Guard, Destin Station at Eglin Air Force Base, Fla.; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°23′33.45″ N, longitude 86°31′37.51″ W; thence to latitude 30°23′35.67″ N, longitude 86°31′37.31″ W; thence to latitude 30°23′33.68″ N, longitude 86°31′30.98″ W; thence to latitude 30°23′32.00″ N, longitude 86°31′28.80″ W; thence proceeding directly to a point on the shoreline at latitude 30°23′30.14″ N, longitude 86°31′30.21″ W.

(b) *The regulations.* (1) No person or vessel shall enter the area without the permission of the Commander, U.S. Coast Guard, Destin Station, Florida, or his/her authorized representative.

(2) The restriction in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, U.S. Coast Guard, Destin Station, and such agencies as he/she may designate.

10. Add § 334.748 to read as follows:

§ 334.748 Wynnhaven Beach, Fla., at Eglin AFB; Restricted Area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 30°24′35.06″ N, longitude 086°46′20.31″ W; thence to latitude 30°24′33.57″ N, longitude 086°46′20.31″ W; then the line meanders irregularly, following the shoreline at a distance of 150 feet seaward from the mean high water line to a point at latitude 30°24′34.81″ N, longitude 086°46′09.19″ W, thence proceeding directly to a point on the shoreline at latitude 30°24′36.30″ N, longitude 086°46′09.19″ W.

(b) *The regulations.* (1) No person or vessel shall enter the area without the permission of the Commander, Eglin Air Force Base, Florida, or his/her authorized representative.

(2) The restriction in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, 96 Air Base Wing, Eglin AFB, and such agencies as he/she may designate.

§ 334.750 [Removed]

11. Remove § 334.750.

Dated: December 17, 2009.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. E9–30659 Filed 12–24–09; 8:45 am]

BILLING CODE 3720–58–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2010–6; Order No. 363]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rule; notice of availability of rulemaking petition.

SUMMARY: The Postal Service has proposed adjustments to the methodology of a key element in the Periodicals cost model. If adopted, the adjustments could affect the price of postage for periodical publications. The Commission is establishing a docket to consider this proposal and invites public comment.

DATES: Comments are due: January 11, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot file submit their views electronically should contact the person identified in ''FOR FURTHER INFORMATION CONTACT'' by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: On December 11, 2009, the Postal Service filed a petition to initiate an informal rulemaking proceeding to consider changes in the methods approved for use in periodic reporting.[1] Proposal Twenty-Nine is part of a developing methodology for estimating the ratio of machine-sorted flats (automated or mechanical) to total sorted flats in the Incoming Secondary operation. The Postal Service refers to this as the ''In-Plant IS Coverage Factor.'' It is a key element in the Postal Service's Periodicals cost model. The In-Plant IS Coverage Factor is currently an input into the calculation of the Auto/Mech Factor. The Auto/Mech factor represents the percent of Periodicals that arrive at plants with mechanized sorting equipment that receive a mechanized incoming secondary sort. The percentage of Periodicals that receive a mechanized incoming secondary sort (*i.e.* the In-Plant IS Coverage Factor) depends on two things: the percentage of Periodicals volume arriving at plants with mechanized flat sorting equipment (also referred to as the Mechanized Coverage Factor), and the percentage of Periodicals that receive a mechanized incoming secondary sort once they arrive at a plant with mechanized flat sorting equipment. (Some flats will be rejected by the flat sorting machine within the plant.) In mathematical terms, the In-Plant IS Coverage Factor is the product of the Auto/Mech Factor and the Mechanized Coverage Factor.

As part of the changes made prior to the FY 2008 Annual Compliance Report (ACR), the Commission approved the use of MODS and RPW data to directly calculate the In-Plant IS Coverage Factor.[2] The previous method assumed that the Auto/Mech factor was 85 percent. The Mechanized Coverage Factor had previously been updated in Docket No. R2006–1. In Docket No. RM2009–1, the Commission considered the Postal Service's proposal to directly calculate the In-Plant IS Coverage Factor as the ratio of non-carrier route flats sorted on mechanized sorting equipment and recorded in MODS reports and the volume of non-carrier route flats recorded in the RPW. The Commission approved the modification, but noted that the directly measured In-Plant IS Factor ''is an imperfect proxy for the mechanization rate for the incoming secondary flat bundle sorting operation.''[3]

In its FY 2008 ACR, the Postal Service estimated the In-Plant IS Coverage Factor using the newly approved method, and also re-ordered the mathematical relation between the In-Plant IS Coverage Factor, the Mechanized Coverage Factor, and the Auto/Mech Factor. Doing this resulted in a value for the Auto/Mech Factor of approximately 99 percent. The Commission rejected this derived Auto/Mech Factor. It viewed the formula revision which produced this result as an unapproved methodology change. It was also concerned that the very high derived value of the Auto/Mech Factor indicated that the use of this revised formula could easily produce the illogical conclusion that more than 100 percent of flats arrived at plants with mechanized sorting equipment. *See* FY2008 Annual Compliance Determination, at 55–56.

This year, in anticipation of the FY 2009 ACR, the Postal Service proposed to again calculate the In-Plant IS Coverage Factor using MODS and RPW data, but promised to take remedial steps if the resulting coverage factor was too close to 100 percent.[4] The Commission approved that modification but recommended that the Postal Service consider revising it in certain respects to avoid an estimate that is unrealistically high.[5] Meanwhile, the Postal Service filed a proposal to use data from somewhat different sources to calculate the Mechanized Coverage Factor.[6] That proposal is still pending Commission approval.

In Proposal Twenty-Nine in the instant docket, the Postal Service recognizes that its current method for calculating an Auto/Mech factor for sorting flats when applied to FY 2009 data produces results that are unreasonably close to 100 percent. It ascribes this, in large part, to the growing volume of ''fletters,'' *i.e.*, ''slim-jim'' sized letters. These are designed to take advantage of favorable letter rates. The Postal Service says that they are difficult to process on letter-sorting equipment, and, therefore, end up with increasing frequency being diverted to flat sorting equipment. It asserts that fletters raise the Total Piece Handling (TPH) counts of mail representing

[1] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytic Principles (Proposal Twenty-nine), December 11, 2009 (Petition).

[2] *See* Docket No. RM2009–1, Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Further Proposed Methodology Changes for the FY 2008 ACR, Proposal Twelve, November 4, 2008.

[3] *See* Docket No. RM2009–1, PRC Order No. 170, Order Concerning Costing Methods Used in Periodic Reporting (Proposal Twelve), January 12, 2009, at 14.

[4] Docket No. RM2009–10, Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposals Three -Nineteen), July 28, 2009, Proposal Twelve, at 3.

[5] *See* Docket No. RM2009–10, PRC Order No. 339, Order on Analytical Principles Used in Periodic Reporting (Proposals Three Through Nineteen), November 13, 200, at 35.

[6] *See* Docket No. RM2010–4, Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposals Twenty-Two-Twenty-Five), October 23, 2009, Proposal Twenty Five, Modification 1.

incoming secondary sorts on automated or mechanized machines, as reflected in the MODS data reporting system, but they are not counted as flats in the RPW data reporting system. The Postal Service asserts that the absence of fletters in the RPW estimate of flat volume and the presence of fletters in the machine piece-handling counts leads to an inflated In-Plant Coverage Factor which inflates the Auto/Mech factor.

Proposal Twenty-Nine proposes adjustments to the Periodicals cost model that would reduce the Auto/Mech factor to a more realistic level. Adopting suggestions made by the Commission in Docket No. RM2009–10, the Postal Service proposes to remove the number of carrier route flats from broken bundles from the MODS volume of flats that receive a mechanized incoming secondary sort.[7] It also proposes to use mail processing costs to estimate the proportion of letter-sized pieces that are worked on those machines. This too would reduce the volume of mail that receive a mechanized incoming secondary sort on flat sorting equipment (recorded in MODS reports, but not the RPW) and thus reduce upward bias in the measurement of the Auto/Mech Factor. See Proposal Twenty-Nine supporting material accompanying the Petition, at 3.

The hard-copy attachment to the Postal Service's Petition explains the proposal's background, objective and rationale. In the electronic attachment, the Postal Service provides a means for estimating the impact of adopting Proposal Twenty-Nine by itself, and for estimating its impact in conjunction with Proposal Twenty-Five in Docket No. RM2010–4, in the event that Proposal Twenty-Five is adopted.

Comments on Proposal Twenty-Nine are due no later than December 29, 2009.

Pursuant to 39 U.S.C. 505, John Klingenberg is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

It is ordered:

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytic Principles (Proposal Twenty-Nine), filed December 11, 2009, is granted.
2. The Commission establishes Docket No. RM2010–6 to consider the matters raised in the Postal Service's Petition.
3. Interested persons may submit comments on Proposal Twenty-Nineno later than December 29, 2009.
4. The Commission will determine the need for reply comments after review of the initial comments.
5. John Klingenberg is designated to serve as the Public Representative representing the interests of the general public.
6. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–30477 Filed 12–23–09; 4:15 pm]

BILLING CODE 7710–FW–S

[7] The In-Plant IS Coverage Factor is based upon the ratio of non-carrier route flats that receive a mechanized incoming secondary sort (in MODS data) and the volume of non-carrier route flats (in the RPW). Broken carrier route flats that receive a mechanized sort would be recorded in MODS volumes, but not RPW volumes, thereby producing an upward bias in the measurement of the In-Plant IS Coverage Factor unless these broken carrier route flats are removed from the MODS measurement of the number of flats that receive a mechanized incoming secondary sort.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0515; FRL–8985–5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Indiana has requested that EPA approve as revisions to its State Implementation Plan both its continuous emission monitoring rule and alternative monitoring requirements for Alcoa Power Generating, Inc.—Warrick Power Plant. The alternative monitoring requirements allow the use of a particulate matter continuous emissions monitoring system in place of a continuous opacity monitor system.

DATES: Comments must be received on or before January 27, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0515, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: November 13, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–30405 Filed 12–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2008–0664; FRL–9095–6]

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; reopening of public comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** of October 19, 2009, proposing 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 substance and consequently does not contribute to stratospheric ozone depletion. In response to requests from several stakeholders and to allow comments on new supporting materials, this action reopens the public comment period through February 1, 2010.

DATES: The comment period for the proposed rule published October 19, 2009 (74 FR 53445), is reopened. Comments, identified by docket identification (ID) number EPA–HQ–OAR–2008–0664, must be received on or before February 1, 2010.

ADDRESSES: Submit your comments to docket 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.

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: Margaret Sheppard, Stratospheric Protection Division, Office of Atmospheric Programs; Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9163; fax number, (202)343–2338; e-mail address: *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:

Background

The statutory and regulatory background is described in detail in the **Federal Register** proposed rule of October 19, 2009 (74 FR 53445). In that document, EPA proposed to find HFO–1234yf acceptable as an alternative refrigerant for motor vehicle air conditioning, subject to use conditions. The refrigerant discussed in the proposed action, for which the comment period is reopened, is a non-ozone-depleting substance.

This Action

EPA has received a request for an extension to the December 18, 2009, comment deadline specified in the October 19, 2009, proposed rule.

This action reopens the comment period. The Agency will consider additional comments we receive through February 1, 2010 in response to this action. Note that additional information is available in the public docket, EPA–HQ–OAR–2008–0664, since publication of the October 19, 2009 proposed rule. EPA will also consider comments received by February 1, 2010 in response to the previous **Federal Register** publication [EPA–OAR–2008–0664] before issuing a final regulatory determination for HFO–1234yf. We intend to issue a regulatory determination as expeditiously as possible following consideration of the comments and information we receive.

Dated: December 18, 2009.

Janet G. McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E9–30629 Filed 12–24–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0190]

RIN 2127–AK20

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes two housekeeping measures relating to Federal Motor Vehicle Safety Standard (FMVSS) No. 217, ''Bus emergency exits and window retention and release.'' First, in response to a petition for rulemaking from the School Bus Manufacturers' Technical Council, NHTSA proposes to amend the standard to specify that the exterior release (the exterior handle) for school bus rear emergency exit doors may be located opposite the door hinges. The standard currently specifies that the exterior release for rear emergency exit doors be located in the middle of the door. Second, this NPRM would clarify FMVSS No. 217 as to the number of force applications that are required to open a window or roof emergency exit. For exits with one release mechanism, the *exit* shall require two force applications to open. The standard currently specifies that the ''mechanism'' shall require two force applications to open. For exits with two release mechanisms, there shall be a total of three force applications to open the exit: one force application shall be applied to each of the two mechanisms to release the mechanism, and another force shall be applied to open the exit.

DATES: Comments must be received on or before February 26, 2010.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* DOT Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 am and 5 pm Eastern time, Monday through Friday, except Federal holidays.
- *FAX:* (202) 493–2551.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to: *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Charles Hott, Office of Vehicle Safety Standards (telephone: 202–366–0247) (*fax:* 202–366–4921), NVS–113. For legal issues, Ms. Dorothy Nakama, Office of the Chief Counsel (telephone: 202–366–2992) (*fax:* 202–366–3820), NCC–112. These officials can be reached at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Location of Exterior Release on Rear Emergency Exit Door
III. Window or Roof Emergency Exit Release
IV. Rulemaking Analyses and Notices

I. Background

The purpose of FMVSS No. 217 (49 CFR 571.217) is to minimize the likelihood of occupants being thrown from the bus and to provide a means of readily accessible emergency egress. FMVSS No. 217 applies to buses (including school buses), except buses manufactured for the purpose of transporting persons under physical restraint. FMVSS No. 217 establishes requirements for the retention of windows other than windshields in buses, and establishes operating forces, opening dimensions, and markings for bus emergency exits.

II. Location of Exterior Release on Rear Emergency Exit Door

At S5.3.3.1(a), FMVSS No. 217 establishes provisions for the location of the interior and exterior releases (handles) for side and rear emergency door exits for school buses with a gross vehicle weight rating (GVWR) greater than 4,536 kilograms (10,000 pounds) (''large school buses''). The standard currently specifies at S5.3.3.1(a) and Figure 3D of the standard, and has specified since 1973, that the interior and exterior releases (handles) for rear emergency exit doors be located in the center of the door. However, school bus manufacturers have always understood the standard as requiring only the placement of the interior release (handle) to be in the center of the door, and that the exterior release (handle) may be near the edge of the door on the side opposite the hinges. This is because the exterior handle so located makes it easier for rescuers outside the school bus to open the rear emergency exit door, using a pulling motion, rather than pulling on an exterior handle located in the center of the door.[1]

The School Bus Manufacturers' Technical Council (SBMTC) petitioned the agency to amend FMVSS No. 217 to specify that the exterior release (handle) for school bus rear emergency exit doors may be located near the edge of the door on the side opposite the hinges. Specifically, SBMTC petitioned to amend S5.3.3.1(a) and one of the two drawings in Figure 3D.

S5.3.3.1(a) specifies that the manual interior and outside releases (handles) are located: ''Within the high force access region shown in Figure 3A for a side emergency exit door, and in figure 3D for a rear emergency exit door.'' Figure 3D consists of two drawings. The left-side drawing shows the vertical dimensions of the high force access region. As shown in the left-side drawing, the release (handle) may be located at any point from the left side of the door to the right. However, the right-side drawing, giving a different perspective of the rear exit, shows that the high force access region is a narrow area in the center of the door. Since S5.3.3.1(a) requires the interior and exterior releases (handles) to be ''[w]ithin the high force access region shown in * * * figure 3D for a rear emergency exit door,'' the releases must be in that narrow area in the center of the door shown in the right-side drawing of Figure 3D. As noted earlier, in actuality, SBMTC stated that manufacturers are ''universally'' placing the exterior releases on the side of the doors opposite the hinges.

SBMTC suggests that we reconcile the language of the standard with the practices of the industry and with what petitioner believes is best for safety. The petitioner suggests that we make the right-side drawing of Figure 3D apply only to the interior release (handle) and not to the exterior release. With regard to applying the right-side drawing to the interior release (handle), the petitioner believes there are reasons to require the interior release to be in the center of the door: the location ensures that the release is visible to bus occupants, and is not obscured by seat backs if the door is wider than the bus's center aisle. Further, we note that the exit would be opened by a pushing rather than pulling

[1] Locating the outside handle in the center region of the door makes it harder for first responders to open the door from the outside in the event of an emergency. This is because of the mechanical advantage provided by the lever arm, *e.g.*, the longer the distance between the handle and the door hinges, the less force is required to open the door. Thus, for optimum leverage, the handle should be operated from the side of the door as far away as possible from the door hinges.

motion, so locating the handle in the center of the door does not markedly increase the difficulty of opening the door. However, since exterior releases (handles) are not obscured by seat backs, and since it is more difficult to open an exit by a pulling motion when the release (handle) is in the center of the door than when the handle is on the edge opposite the hinges, SBMTC believes that specifying a location in the center of the door serves no safety purpose for an exterior release.

NHTSA agrees. We propose amending the standard to specify that the interior release (handle) for a rear emergency exit must be in the high force access region shown in both drawings of current Figure 3D, and that the exterior release for the exit must only be in the high force access region shown in the left-side drawing of current Figure 3D. Although no manufacturer currently places the exterior release in the center of the door, we request comment on whether we should require the exterior release to be no further than two inches away from the edge of the door. (To clarify the standard, NHTSA proposes that instead of having Figure 3D consist of two drawings, Figure 3D would be easier to understand if the left-side drawing were renamed Figure 3D(1) and the right-side drawing were renamed Figure 3D(2).) We tentatively agree that the school bus manufacturers' current practice of placing the exterior rear emergency exit door release (handle) near the edge of the door on the side opposite the hinges better meets the need for safety than placing the exterior release in the center of the door. Releases (handles) placed opposite the hinges would require less force to pull open the door for persons outside the school bus.

We believe that this proposal is primarily a housekeeping measure that involves no cost implications, since all manufacturers of large school buses currently locate the exterior release (handle) on the edge of the door opposite the hinges. Demands on agency rulemaking resources have impeded the agency's progress in issuing this NPRM on this housekeeping matter. This proposal would provide more flexibility in locating the exterior release.

Since all manufacturers currently meet the proposed changes discussed above regarding placement of the exterior release (handle), we propose making the amendments effective 60 days following publication of a final rule.

III. Window or Roof Emergency Exit Release

At S5.3.3.2, FMVSS No. 217 specifies the type of and force applications to open emergency window exits in all school buses, and at S5.3.3.3 does the same for school bus emergency roof exits. At S5.3.2, the standard specifies the type of and force applications to open emergency exits in buses other than school buses.

These paragraphs of the standard specify, among other things: ''In the case of [an exit] with one release mechanism, the mechanism shall require two force applications to release the exit. In the case of [an exit] with two release mechanisms, each mechanism shall require one [force] application to release the exit.'' The language first appeared in a November 2, 1992, final rule (57 FR 49423).

In a June 13, 1994 interpretation letter to Blue Bird Body Company (Blue Bird), NHTSA stated that the sentence in S5.3.3.2, ''In the case of windows with one release mechanism, the mechanism shall require two force applications to release the exit,'' was incorrect. The agency stated that the sentence was meant to read: ''In the case of windows with one release mechanism, the exit shall require two force applications *to open*.'' (Emphasis added.) That is to say, the agency intended a window or roof exit with one release mechanism to be able to be opened with only two force applications: One force application that undoes the release mechanism and a second force application that opens the exit. The concern with the strict wording of the standard is that it could be read as specifying that two force applications are used to activate the single mechanism and that a third force application is applied to open the exit. This NPRM proposes to correct the wording so that it states more clearly what the agency had intended (described below). It should be noted that this rulemaking is primarily a housekeeping measure; we believe that all emergency window and roof exits are currently manufactured to meet the requirements that the agency had intended.

Accordingly, the agency proposes the following changes. NHTSA believes that S5.3.2, S5.3.3.2, and S5.3.3 would be clearer if the requirements for releasing the mechanism(s) are separated from the requirements for opening the exit. NHTSA proposes to specify, for exits with one release mechanism, the exit shall require two force applications to open. For exits with two release mechanisms, there shall be a total of three force applications to open the exit: one force application shall be applied to each of the two mechanisms to release the mechanism, and another force shall be applied to open the exit.

NHTSA proposes that if made final, these amendments to the force application requirements take effect one year after the final rule is published in the **Federal Register**, with early optional compliance permitted. To the agency's knowledge, all emergency window and roof exits are currently manufactured to meet the proposed requirements. However, to the extent that changes may be necessitated to meet the proposed requirements, NHTSA believes one year should be sufficient time to implement the changes. Comments are requested on these issues.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA believes that there will be no costs associated with this proposed rule. We believe that all vehicles currently meet the proposed changes discussed in this NPRM.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the

Regulatory Flexibility Act. I hereby certify that if made final, this proposed rule would not have a significant economic impact on a substantial number of small entities. If made final, this proposed rule would not substantively change existing FMVSS No. 217 requirements for small businesses that are school bus manufacturers.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 13132 (Federalism)

NHTSA has examined today's proposal pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposal does not have federalism implications because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Further, no consultation is needed to discuss the preemptive effect of today's proposal. NHTSA's safety standards can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation would be unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000). However, NHTSA has considered the nature and purpose of today's proposal and does not currently foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. There are no collections of information associated with this notice of proposed rulemaking. Thus, the Paperwork Reduction Act would not apply.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After carefully reviewing the available information, NHTSA has determined that there are no voluntary consensus standards relevant to this rulemaking, as this NPRM seeks to clarify existing FMVSS No. 217 requirements.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). This proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in

the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477 at 19478).

V. Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.[2] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the methods discussed in the **ADDRESSES** section at the beginning of this NPRM.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.*

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[3]

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth at the beginning of this NPRM.

Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received too late for us to consider in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the DOT Docket by going to the street address given above under **ADDRESSES.**

List of Subjects in 49 CFR Part 571

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.217 is amended by:

a. Revising S5.3.2(a), S5.3.2(b)(1) and (b)(2), S5.3.3.1(a), and the first sentence of S5.3.3.2;

b. Redesignating S5.3.3.3 as S5.3.3.4;

c. Adding a new S5.3.2.1 (a) and (b), S5.3.3.3 and S5.3.3.3.1;

d. Revising the first sentence of newly redesignated paragraph S5.3.3.4;

e. Adding S5.3.3.5 and S5.3.3.5.1 following S5.3.3.4(b)(3); and,

f. Revising Figure 3D.

The revised, redesignated and added text and figure read as follows:

§ 571.217 Standard No. 217; Bus emergency exits and window retention and release.

* * * * *

S5.3.2 * * *

(a) When tested under the conditions of S6., both before and after the window retention test required by S5.1, each emergency exit not required by S5.2.3 shall allow manual release of the exit by a single person, from inside the passenger compartment, using force applications each of which conforms, at the option of the manufacturer, either to S5.3.2.1(a) or S5.3.2.1(b).

* * * * *

(b) * * *

(1) For vehicles manufactured before September 1, 2010, *[this date has been inserted for illustration purposes],* each exit described in S5.3.2(a) shall have not more than two release mechanisms. In the case of exits with one release mechanism, the mechanism shall require two force applications to release the exit. In the case of exits with two release mechanisms, each mechanism shall require one force application to release the exit. At least one of the force applications for each exit shall differ from the direction of the initial motion to open the exit by not less than 90° and no more than 180°. The force applications for the mechanism(s) must conform to either (a) or (b) of S5.3.2.1.

(2) For vehicles manufactured on or after September 1, 2010, *[this date has been inserted for illustration purposes],* each exit described in S5.3.2(a) shall have no more than two release mechanisms. For exits with one release mechanism, the exit shall require two force applications to open the exit: one force application shall be applied to the mechanism and another force application shall be applied to open the exit. The force application for the release mechanism must differ by not less than 90 degrees and not more than 180 degrees from the direction of the initial motion to open the exit. For exits with two release mechanisms, there shall be a total of three force applications to open the exit: one force application shall be applied to each of the two mechanisms to release each mechanism, and another force shall be applied to open the exit. The force application for at least one of the release mechanisms must differ by not less than 90 degrees and not more than 180 degrees from the direction of the initial motion to open the exit. The force applications for the mechanism(s) must conform to either S5.3.2.1(a) or S5.3.2.1(b), as appropriate.

[2] *See* 49 CFR 553.21.

[3] See 49 CFR 512.

S5.3.2.1(a) *Low-force application.*

(1) Location. As shown in Figure 1 or Figure 3.

(2) Type of motion. Rotary or straight.

(3) Magnitude. Not more than 90 N.

(b) *High-force application.*

(1) Location. As shown in Figure 2 or Figure 3.

(2) Type of motion. Straight, perpendicular to the undisturbed exit surface.

(3) Magnitude. Not more than 270 N.

S5.3.3.1 * * *

(a) *Location:* Within the high force access region shown in Figure 3A for a side emergency exit door, within the high force access region shown in both Figure 3D(1) and Figure 3D(2) for an interior release mechanism for a rear emergency exit door, and within the high force access region shown in Figure 3D(1) for an exterior release mechanism for a rear emergency exit door.

* * * * *

S5.3.3.2 For vehicles manufactured before September 1, 2010, *[this date has been inserted for illustration purposes],* when tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency exit window must allow manual opening of the exit by a single person, from inside the passenger compartment, using not more than two release mechanisms located in specified low-force or high-force regions (at the option of the manufacturer) with force applications and types of motions that conform to either S5.3.3.2(a) or (b) of this section. * * *

* * * * *

S5.3.3.3 For vehicles manufactured on or after September 1, 2010, *[this date has been inserted for illustration purposes],* when tested under the conditions of S6., both before and after the window retention test required by S5.1, each school bus emergency exit window must allow manual opening of the exit by a single person, from inside the passenger compartment. Each exit shall have no more than two release mechanisms. The mechanism(s) must be located in either the specified low-force or high-force regions (at the option of the manufacturer), with force applications and types of motions that conform to either S5.3.3.3.1(a) or (b) of this section, as appropriate. For exits with one release mechanism, the exit shall require two force applications to open the exit. The force application for the release mechanism must differ by not less than 90 degrees and not more than 180 degrees from the direction of the initial motion to open the exit. For exits with two release mechanisms, there shall be a total of three force applications to open the exit: one force application shall be applied to each of the two mechanisms to release each mechanism, and another force shall be applied to open the exit. The force application for at least one of the release mechanisms must differ by not less than 90 degrees and not more than 180 degrees from the direction of the initial motion to open the exit. Each release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system. When a release mechanism is unlatched and the vehicle's ignition is in the ''on'' position, a continuous warning shall be audible at the driver's seating position and in the vicinity of that emergency exit.

S5.3.3.3.1 The mechanism(s) must be located in either the specified low-force or high-force regions (at the option of the manufacturer), with force applications and types of motions that conform to either S5.3.3.3.1(a) or (b) of this section depending upon the location of the mechanism.

(a) Emergency exit windows—*Low-force application.*

(1) Location: Within the low-force access regions shown in Figures 1 and 3 for an emergency exit window.

(2) Type of motion: Rotary or straight.

(3) Magnitude: Not more than 90 N.

(b) Emergency exit windows—*High-force application.*

(1) Location: Within the high-force access regions shown in Figures 2 and 3 for an emergency exit window.

(2) Type of motion: Straight and perpendicular to the undisturbed exit surface.

(3) Magnitude: Not more than 180 N.

S5.3.3.4 For vehicles manufactured before September 1, 2010, *[this date has been inserted for illustration purposes],* when tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency roof exit shall allow manual opening of the exit by a single person from both inside and outside the passenger compartment, using not more than two release mechanisms located in specified low-force or high-force regions (at the option of the manufacturer) with force applications and types of motions that conform to either S5.3.3.4(a) or (b) of this section. * * *

* * * * *

S5.3.3.5 For vehicles manufactured on or after September 1, 2010, *[this date has been inserted for illustration purposes],* when tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency roof exit must allow manual opening of the exit by a single person, from inside the passenger compartment. Each exit shall have no more than two release mechanisms. The mechanism(s) must be located in either the specified low-force or high-force regions (at the option of the manufacturer), with force applications and types of motions that conform to either S5.3.3.5.1(a) or (b) of this section, as appropriate. For exits with one release mechanism, the exit shall require two force applications to open the exit. The force application for the release mechanism must differ by not less than 90 degrees and not more than 180 degrees from the direction of the initial motion to open the exit. For exits with two release mechanisms, there shall be a total of three force applications to open the exit: One force application shall be applied to each of the two mechanisms to release each mechanism, and another force shall be applied to open the exit. The force application for at least one of the release mechanisms must differ by not less than 90 degrees and not more than 180 degrees from the direction of the initial motion to open the exit.

S5.3.3.5.1 The mechanism(s) must be located in either the specified low-force or high-force regions (at the option of the manufacturer), with force applications and types of motions that conform to either S5.3.3.5.1(a) or (b) of this section depending upon the location of the mechanism.

(a) Emergency roof exits—*Low-force application.*

(1) Location: Within the low force access regions shown in Figure 3B, in the case of buses whose roof exits are not offset from the plane specified in S5.2.3.2(b)(5). In the case of buses which have roof exits offset from the plane specified in S5.2.3.2(b)(5), the amount of offset shall be used to recalculate the dimensions in Figure 3B for the offset exits.

(2) Type of motion: Rotary or straight.

(3) Magnitude: Not more than 90 N.

(b) Emergency roof exits—*High-force application.*

(1) Location: Within the high force access regions shown in Figure 3B, in the case of buses whose roof exits are not offset from the plane specified in S5.2.3.2(b)(5). In the case of buses which have roof exits offset from the plane specified in S5.2.3.2(b)(5), the amount of offset shall be used to recalculate the dimensions in Figure 3B for the offset exits.

(2) Type of motion: Straight and perpendicular to the undisturbed exit surface.

(3) Magnitude: Not more than 180 N.

* * * * *

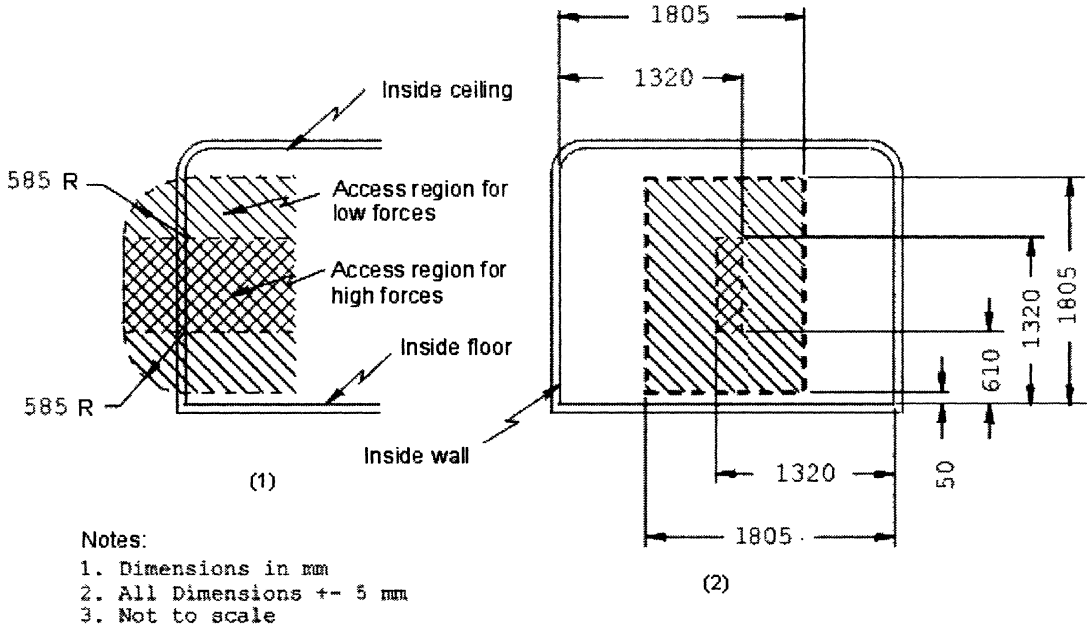

Figure 3D- **REAR EMERGENCY EXIT WITHOUT REAR OBSTRUCTION**

Issued on: December 11, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–30324 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AW30

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Amendment 3 to the Northeast Skate Complex Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 3 to the Northeast Skate Complex Fishery Management Plan (FMP) (Amendment 3), incorporating a Final Environmental Impact Statement (FEIS) and an Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 3, which was developed by the Council to rebuild overfished skate stocks and implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the requirements of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 3 would implement a rebuilding plan for smooth skate and establish an ACL and annual catch target (ACT) for the skate complex, total allowable landings (TAL) for the skate wing and bait fisheries, seasonal quotas for the bait fishery, reduced possession limits, in-season possession limit triggers, and other measures to improve management.

DATES: Comments must be received on or before February 26, 2010.

ADDRESSES: An FEIS was prepared for Amendment 3 that describes the proposed action and its alternatives and provides a thorough analysis of the impacts of proposed measures and their alternatives. Copies of Amendment 3, including the FEIS and the IRFA, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

You may submit comments, identified by 0648–AW30, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Fax:* (978) 281–9135, Attn: Tobey Curtis.
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Skate Amendment 3.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273; *fax:* (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In 2003, NMFS implemented the Skate FMP to manage a complex of seven skate species in the Northeast Region: winter (*Leucoraja ocellata*); little (*L. erinacea*); thorny (*Amblyraja radiata*); barndoor (*Dipturus laevis*); smooth (*Malacoraja senta*); clearnose (*Raja eglanteria*); and rosette (*L. garmani*). The FMP established biological reference points and overfishing definitions for each species based on abundance indices in the Northeast Fisheries Science Center bottom trawl survey. In February 2007, NMFS informed the Council that, based on trawl survey data updated through 2006, winter skate was considered overfished. The Council was therefore required to initiate a rebuilding plan for winter skate, consistent with the Magnuson-Stevens Act.

At the time the amendment was initiated, the objectives of Amendment 3 were to rebuild winter skate and thorny skate (a species that has been overfished since FMP implementation) to their respective biomass targets, and to implement ACLs and AMs for the skate complex, consistent with the reauthorized Magnuson-Stevens Act. However, over the course of developing the amendment, the objectives were modified to reflect more recent scientific information. Primarily, this includes the results of a new stock assessment completed in December 2008 by the Northeast Data Poor Stocks Working Group (DPWG). This assessment updated the minimum biomass thresholds and biomass targets for six of the seven skate species in the complex, resulting in a change in status for some species.

These new biomass reference points, as well as the most recent trawl survey data, indicate that winter skate is not overfished; however, thorny skates remain overfished, and smooth skates are now also considered to be overfished. Thorny skate was also determined to be experiencing overfishing in 2007 (but not in 2008); therefore, under the requirements of the reauthorized Magnuson-Stevens Act, the Skate FMP must be amended to establish a rebuilding plan for smooth skate and establish ACLs and AMs by 2011. The final objectives of Amendment 3 are to rebuild smooth and thorny skate, promote biomass increases in other skate stocks, and implement ACLs and AMs for the skate complex.

Amendment 3 includes the following management measures: New biological reference points reflecting the results of the DPWG; a new ACL framework that includes an ACT (22,982 mt per year) and TAL (9,427 mt per year) allocated to the skate wing (66.5 percent) and bait (33.5 percent) fisheries; reduced possession limits for the skate wing and bait fisheries; in-season possession limit triggers to slow the rate of landings as the TAL is approached; AMs for ACL and TAL overages; and new annual review and specifications procedures.

Public comments are being solicited on Amendment 3 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 3 will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 3 to be considered in the approval/disapproval decision on the amendment. All comments received by February 26, 2010, whether specifically directed to Amendment 3 or the proposed rule for Amendment 3, will be considered in the approval/disapproval decision on Amendment 3. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 3. To be considered, comments must be received by close of business on the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 22, 2009.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30693 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 74, No. 247

Monday, December 28, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the USDA Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 26, 2010.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. *Fax:* (202) 720–8435. *E-mail: michele.brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA, Rural Utilities Service, STOP 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522. *Fax:* (202) 720–8435. *E-mail: michele.brooks@wdc.usda.gov.*

Title: Pre-loan Procedures and Requirements for Telecommunications Programs.

OMB Control Number: 0572–0079.

Type of Request: Extension of a currently approved information collection.

Abstract: The burden required by this collection consists of information that will allow the Agency to determine an applicant's eligibility to borrow from the Agency under the terms of the Rural Electrification Act (RE Act) of 1936 as amended (7 U.S.C. 912). This information is also used by the Agency to determine that the Government's security for loans made by the Agency is reasonably adequate and that the loans will be repaid within the time agreed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9.17 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 8.12.

Estimated Total Annual Burden on Respondents: 3,721.

Copies of this information collection can be obtained from Gale Richardson, Program Development and Regulatory Analysis, at (202) 720–0992, *Fax:* (202) 720–8435. 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: December 22, 2009.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. E9–30660 Filed 12–24–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0006]

Notice of Availability of a Bovine Brucellosis Program Concept Paper

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments; reopening of comment period.

SUMMARY: We are reopening the comment period for our notice that made a concept paper describing a new direction for the bovine brucellosis program available for public comment. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before January 4, 2010.

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-2009-0006*) 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-2009-0006, 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-2009-0006.

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. Lee Ann Thomas, Director, Ruminant Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION: On October 5, 2009, we published in the **Federal Register** (74 FR 51115-51116, Docket No. APHIS-2009-0006) a notice that made a concept paper describing a new direction for the bovine brucellosis program available for public review and comment.

Comments on the notice were required to be received on or before December 4, 2009. We are reopening the comment period on Docket No. APHIS-2009-0006 for an additional 30 days ending January 4, 2010. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between December 4, 2009, and the date of this notice.

Done in Washington, DC, this 16th day of December 2009.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–30684 Filed 12–24–09: 12:40 pm]

BILLING CODE: 3410–34–S

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Florida Advisory Committee (Committee) to the Commission will convene at 1:30 p.m. and adjourn at approximately 4 p.m. on Thursday, January 28, 2010, at the West Tampa Library, 2312 West Union Street, Tampa, Florida, 33607. The purpose of the meeting is for the Committee to receive a briefing from experts on educational resources provided to children of migrant workers.

Members of the public are entitled to submit written comments; the comments must be received in the Southern Regional Office of the Commission by February 28, 2010. The address is 61 Forsyth St., SW., Suite 18T40, Atlanta, Georgia, 30303. Persons wishing to e-mail comments may do so to *pminarik@usccr.gov.* Persons who desire additional information should contact Dr. Peter Minarik, Regional Director, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, December 22, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination United States Commission on Civil Rights.

[FR Doc. E9–30722 Filed 12–24–09; 8:45 am]

BILLING CODE 6335–02–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Reexaminations.

Form Number(s): PTO/SB/57 and PTO/SB/58.

Agency Approval Number: 0651–00XX.

Type of Request: New collection.

Burden: 161,128 hours annually.

Number of Respondents: 5,124 responses per year.

Average Hours per Response: The USPTO estimates that it will take the public approximately 18 minutes (0.30 hours) to 148 hours to gather the necessary information, prepare the appropriate form or other documents, and submit the information to the USPTO.

Needs and Uses: The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. Chapter 30 of Title 35 U.S.C. provides that any person at any time may file a request for reexamination by the USPTO of any claim of a patent on the basis of prior art patents or printed publications. Once initiated, the reexamination proceedings under Chapter 30 are substantially *ex parte* and do not permit input from third parties. Chapter 31 of Title 35 U.S.C. provides for *inter partes* reexamination allowing third parties to participate throughout the reexamination proceeding. The rules outlining *ex parte* and *inter partes* reexaminations are found at 37 CFR 1.510–1.570 and 1.902–1.997.

Information requirements related to patent reexaminations are currently covered under OMB Control Number 0651–0033, along with other requirements related to patent issue fees and reissue applications. The USPTO is proposing to move the following items that are under 0651–0033 into a new information collection for Patent Reexaminations: Request for *Ex Parte* Reexamination Transmittal Form; Request for *Inter Partes* Reexamination Transmittal Form; Petition to Review the Refusal to Grant *Ex Parte* Reexamination; Petition to Review the Refusal to Grant *Inter Partes* Reexamination; and Petition to Request Extension of Time in *Ex Parte* or *Inter Partes* Reexamination.

The USPTO is also proposing to include additional items related to patent reexaminations in this new information collection: Request for *Ex Parte* Reexamination; Request for *Inter Partes* Reexamination; Patent Owner's 37 CFR 1.530 Statement; Third Party Requester's 37 CFR 1.535 Reply; Amendment in *Ex Parte* or *Inter Partes* Reexamination; Third Party Requester's 37 CFR 1.947 Comments in *Inter Partes* Reexamination; Response to Final Rejection in *Ex Parte* Reexamination; Patent Owner's 37 CFR 1.951 Response in *Inter Partes* Reexamination; and Third Party Requester's 37 CFR 1.951 Comments in *Inter Partes* Reexamination. These additional items are existing information requirements that previously were not fully covered by an information collection and are now being included in order to more accurately reflect the burden on the public for submitting requests related to patent reexaminations.

The public uses this information collection to request reexamination

proceedings and to ensure that the associated fees and documentation are submitted to the USPTO.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–00XX Patent Reexaminations copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before January 27, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: December 17, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. E9–30626 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') published its preliminary results of the administrative review of the antidumping duty order on folding metal tables and chairs (''FMTCs'') from the People's Republic of China (''PRC'') on July 7, 2009.[1] The period of review (''POR'') is June 1, 2007, through May 31, 2008. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* December 28, 2009

FOR FURTHER INFORMATION CONTACT: Giselle Cubillos or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1778 or (202) 482–0650, respectively.

Background

On July 7, 2009, the Department published its preliminary results. On July 27, 2009, Meco Corporation (''Meco''), the petitioner in the underlying investigation, and New-Tec Integration (Xiamen) Co., Ltd. (''New-Tec''), a respondent, provided additional comments on the appropriate surrogate values to use as a means of valuing the factors of production, including financial statements from Maximaa Systems Limited (2007–2008) (''Maximaa''). Meco submitted on August 6, 2009, publicly available information to ''rebut, clarify, or correct'' the information submitted by New-Tec. On August 6 and 7, 2009, the Department received case briefs from Meco, New-Tec and Cosco Home and Office Products (''Cosco''), a U.S. importer of subject merchandise, respectively. Meco included a request for a public hearing in its case brief submission. On August 11, 2009, New-Tec, Cosco, and Meco submitted rebuttal briefs. On September 9, 2009, the Department held a public hearing.

We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213.

Scope of Order

The products covered by this order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

(1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

Lawn furniture;

Trays commonly referred to as ''TV trays;''

Side tables;

Child-sized tables;

Portable counter sets consisting of rectangular tables 36″ high and matching stools; and,

Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28″ to 36″ wide by 48″ to 96″ long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

(2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

Folding metal chairs with a wooden back or seat, or both;

Lawn furniture;

Stools;

Chairs with arms; and

Child-sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and

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[1] *See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 32118 (July 7, 2009) (''*Preliminary Results*'').

9403.70.8030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Based on a request by RPA International Pty., Ltd. and RPS, LLC (collectively, ''RPA''), the Department ruled on January 13, 2003, that RPA's poly-fold metal folding chairs are within the scope of the order because they are identical in all material respects to the merchandise described in the petition, the initial investigation, and the determinations of the Secretary.

On May 5, 2003, in response to a request by Staples, the Office Superstore Inc. (''Staples''), the Department issued a scope ruling that the chair component of Staples' ''Complete Office-To-Go,'' a folding chair with a tubular steel frame and a seat and back of plastic, with measurements of: height: 32.5 inches; width: 18.5 inches; and depth: 21.5 inches, is covered by the scope of the order because it is identical in all material respects to the scope description in the order, but that the table component, with measurements of: width (table top): 43 inches; depth (table top): 27.375 inches; and height: 34.875 inches, has legs that fold as a unit and meets the requirements for an exemption from the scope of the order.

On September 7, 2004, the Department found that table styles 4600 and 4606 produced by Lifetime Plastic Products Ltd. are within the scope of the order because these products have all of the components that constitute a folding metal table as described in the scope.

On July 13, 2005, the Department issued a scope ruling determining that ''butterfly'' chairs are not within the scope of the antidumping duty order because they do not meet the physical description of merchandise covered by the scope of the order as they do not have cross braces affixed to the front and/or rear legs, and the seat and back is one piece of cloth that is not affixed to the frame with screws, rivets, welds, or any other type of fastener.

On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs imported by Korhani of America Inc. are within the scope of the antidumping duty order because the imported chair has a wooden seat, which is padded with foam and covered with fabric or polyvinyl chloride, attached to the tubular steel seat frame with screws, and has cross-braces affixed to its legs.

On May 1, 2006, the Department issued a scope ruling determining that ''moon chairs'' are not included within the scope of the antidumping duty order because moon chairs have different physical characteristics, different uses, and are advertised differently than chairs covered by the scope of the order.

On October 4, 2007, the Department issued a scope ruling determining that International E–Z Up Inc.'s (''E–Z Up'') Instant Work Bench is not included within the scope of the antidumping duty order because its legs and weight do not match the description of the folding metal tables in the scope of the order.

On April 18, 2008, the Department issued a scope ruling determining that the VIKA Twofold 2-in-1 Workbench/Scaffold (''Twofold Workbench/Scaffold'') imported by Ignite USA, LLC from the PRC is not included within the scope of the antidumping duty order because its rotating leg mechanism differs from the folding metal tables subject to the order, and its weight is twice as much as the expected maximum weight for folding metal tables within the scope of the order.

On May 6, 2009, the Department issued a final determination of circumvention, determining that imports from the PRC of folding metal tables with legs connected by cross–bars, so that the legs fold in sets, and otherwise meeting the description of in–scope merchandise, are circumventing the order and are properly considered to be within the class or kind of merchandise subject to the order on FMTCs from the PRC.

On May 22, 2009, the Department issued a scope ruling determining that folding metal chairs that have legs that are not connected with cross-bars are within the scope of the antidumping duty order on folding metal tables and chairs from the PRC.

On October 27, 2009, the Department issued a scope ruling that Lifetime Products, Inc.'s (''Lifetime'') fold-in-half adjustable height tables are not included within the scope of the antidumping duty order because Lifetime's tables essentially share the physical characteristics of banquet tables, which are expressly excluded from the scope of the order and, therefore, are outside the scope of the order.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this review are addressed in the memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the 2007–2008 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China'' (December 18, 2009) (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU'') in room 1117 in the main Department building, and is also accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for New-Tec. We have revised the calculation of normal value to include certain market economy purchases reported by New-Tec and previously valued with a surrogate value from India, and have revised the surrogate financial ratios to rely upon contemporaneous financial statements from Maximaa.[2]

Final Results of Review

We determine that the following dumping margins exist for the POR:

Exporter/manufacturer	Weighted-average margin percentage
New-Tec*	0.12

* This rate is *de minimis.*

Assessment

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated exporter/importer- (or customer) specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the

[2] *See* Memorandum to the File, ''Final Results of the 2006–2007 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum to the File,'' at Comment 1 (December 18, 2009) (''Final Surrogate Value Memorandum'').

entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) specific assessment rate is *de minimis* under 19 CFR 351.106(c) (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For New-Tec, the cash deposit rate will be the company-specific rate established in the final results of review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 70.71 percent; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

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 the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. 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 the terms of an APO is a sanctionable violation.

This notice of the final results of this administrative review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 18, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Issues and Decision Memorandum

Comment 1: Use of the Appropriate Financial Statements for Calculation of Surrogate Financial Ratios

Comment 2: Use of Market Economy Purchase Prices for Certain New-Tec Factors of Production

Comment 3: Selection of HTS Classifications for Certain Surrogate Values

[FR Doc. E9–30695 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on honey from Argentina. The review covers one company (*see* ''Background'' section of this notice for further explanation). The period of review (POR) is December 1, 2007, through November 30, 2008.

We preliminarily determine that sales of honey from Argentina have not been made below normal value (NV) by Asociacion de Cooperativas Argentinas (ACA) during the POR. We also preliminarily intend to revoke ACA from the antidumping duty order pursuant to its request dated December 30, 2008. If these preliminary results are adopted in our final results of administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP). Interested parties are invited to comment on these preliminary results. *See* ''Preliminary Results of Review,'' below.

DATES: *Effective Date:* December 29, 2009.

FOR FURTHER INFORMATION CONTACT: John Drury, Dena Crossland, or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7850, Washington, DC 20230; telephone (202) 482–0195, (202) 482–3362, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping duty order on honey from Argentina. *See Notice of Antidumping Duty Order: Honey From Argentina,* 66 FR 63672 (December 10, 2001). On December 1, 2008, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 73 FR 72764 (December 1, 2008). In response, on December 30, 2008, ACA requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2007, through November 30, 2008. On December 31, 2008, the American Honey Producers Association and Sioux Honey Association (collectively, petitioners) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2007, through November 30, 2008. Specifically, petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by 17 Argentine producers/exporters.[1] Also on December 31, 2008, Nexco S.A. (Nexco) requested an administrative review of the antidumping duty order on honey from Argentina for the period December

[1] Petitioners requested Compania Apicola Argentina S.A. (CAA) and Mielar S.A. (Mielar) as separate entities. However, in a previous segment of this proceeding, the Department treated these two companies as a single entity.

1, 2007, through November 30, 2008. ACA and Nexco were included in the petitioners' request for review.

On February 2, 2009, the Department initiated a review of the 17 companies for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 5821 (February 2, 2009) (*Initiation Notice*).

The Department received a request for administrative review from Patagonik S.A. (Patagonik) in response to the December 1, 2008, opportunity to request an administrative review. However, its request was dated January 2, 2009, after the December 31, 2008, deadline. On January 23, 2009, the Department returned the letter requesting an administrative review to Patagonik, stating that the request was untimely and that the Department would not initiate a review based on this request. *See* Letter from the Department of Commerce to Patagonik S.A., dated January 23, 2009. On February 23, 2009, Patagonik submitted a letter requesting that the Department reconsider its decision not to initiate a review based on Patagonik's request. Patagonik provided information to the Department indicating the reasons for the untimely filing of the request. After examining the information, the Department again declined to initiate an administrative review based on Patagonik's request. *See* Letter from the Department of Commerce to Patagonik S.A., dated March 17, 2009.

On February 9, 2009, Compania Invesora Platense S.A. (CIPSA) submitted a letter certifying that during the POR, it had no exports, sales, or entries of subject merchandise, and requested that the Department rescind the administrative review with respect to CIPSA.

On February 10, 2009, the Department issued a memorandum indicating its intention to limit the number of respondents selected for review and to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of Argentine honey during the POR. *See* Memorandum to File through Richard Weible, Office Director, Office 7, AD/CVD Operations, regarding ''Honey from Argentina—United States Customs and Border Protection Entry Data for Selection of Respondents for Individual Review,'' dated February 10, 2009. On February 17, 2009, HoneyMax S.A. (HoneyMax), an exporter of subject merchandise, submitted comments in response to the Department's intended respondent selection methodology. HoneyMax requested that for the purpose of mandatory respondent selection in the instant review, the Department issue quantity and value questionnaires to parties for whom a review had been requested, rather than rely on CBP entry data.

On February 18, 2009, Mielar and CAA submitted a letter certifying that during the POR, neither had made any shipment, sale, or U.S. entry of subject merchandise, and requested that the Department rescind the administrative review with respect to Mielar and CAA.

On March 4, 2009, HoneyMax submitted a letter certifying that during the POR, it had no sales of subject merchandise, and requested that the Department rescind the administrative review with respect to HoneyMax.

On March 6, 2009, petitioners timely withdrew their requests for review of the following companies: AGLH S.A., Algodonera Avellaneda S.A., Alimentos Naturales-Natural Foods, Alma Pura, Bomare S.A. (Bodegas Miguel Armengol), Compania Apicola Argentina S.A. and Mielar S.A., CIPSA, EL Mana S.A., HoneyMax, Interrupcion S.A., Miel Ceta SRL, Patagonik S.A., Productos Afer S.A., Seabird Argentina S.A., and Seylinco S.A. (Seylinco).

On March 9, 2009, Seylinco submitted a letter certifying that during the POR, it had no sales of subject merchandise, and requested that the Department rescind the administrative review with respect to Seylinco.

On April 17, 2009, the Department rescinded the administrative review with respect to AGLH S.A., Algodonera Avellaneda S.A., Alimentos Naturales-Natural Foods, Alma Pura, Bomare S.A. (Bodegas Miguel Armengol), Compania Apicola Argentina S.A. and Mielar S.A., CIPSA, EL Mana S.A., HoneyMax, Interrupcion S.A., Miel Ceta SRL, Patagonik S.A., Productos Afer S.A., Seabird Argentina S.A., and Seylinco because petitioners were the only party to request an administrative review of each of these companies. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 17815 (April 17, 2009).

On April 21, 2009, the Department issued sections A, B, and C of the antidumping questionnaire to the remaining respondents, ACA and Nexco.

ACA and Nexco filed their responses to section A of the Department's questionnaire on May 26, 2009, and ACA filed its response to sections B and C of the Department's questionnaire on June 18, 2009.

On June 10, 2009, both petitioners and Nexco submitted letters withdrawing their requests for an administrative review of Nexco. On July 16, 2009, the Department published a notice of partial rescission in response to petitioners' and Nexco's June 10, 2009, withdrawal of their requests for review of Nexco. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 34550 (July 16, 2009).

On July 8, 2009, petitioners submitted a letter alleging that ACA had made comparison market sales of honey at prices below the cost of production (COP) during the POR. ACA submitted comments regarding the petitioners' cost allegation on July 20, 2009.

The Department issued a supplemental questionnaire to ACA for sections A, B, and C of the questionnaire on July 24, 2009, to which ACA responded on August 24, 2009.

On August 7, 2009, the Department issued a memorandum stating the petitioners had not provided a reasonable basis to believe or suspect ACA sold honey in the comparison market at prices below the COP during the POR and, based on this reason, did not initiate a sales-below-cost investigation for ACA. *See* Memorandum to Richard Weible, Director, Office 7, ''Petitioner's Allegation of Sales Below the Cost of Production with Respect to Asociacion de Cooperativas Argentinas in the December 1, 2007—November 30, 2008 Administrative Review of the Antidumping Duty Order on Honey from Argentina,'' dated August 7, 2009 (ACA Cost Allegation Memorandum).

The Department issued a second supplemental questionnaire to ACA for sections B and C on September 4, 2009, to which ACA responded on September 14, 2009.

On September 9, 2009, the Department extended the deadline for the preliminary results of this review from September 2, 2009, to December 18, 2009. *See Honey from Argentina: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 46418 (September 9, 2009).

On December 4, 2009, ACA submitted a letter requesting that the Department correct an error to the Department's verification report dated November 25, 2009. On December 11, 2009, the Department rejected ACA's December 4, 2009, letter in accordance with 19 CFR 351.302(d) because it contained untimely and unsolicited new factual information.

Scope of the Review

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial

honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise covered by the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Intent To Revoke In Part

As noted above, on December 30, 2008, ACA requested revocation of the antidumping duty order with respect to its sales of subject merchandise, pursuant to 19 CFR 351.222(b)(2). ACA's request was accompanied by certifications that it: (1) Has sold subject merchandise at not less than NV in the current review period and will not sell subject merchandise at less than NV in the future; (2) has sold subject merchandise in commercial quantities during each of the consecutive three years forming the basis for its request for revocation; and (3) agrees to reinstatement of the antidumping duty order if the Department concludes ACA has sold subject merchandise at less than NV subsequent to revocation. *See* 19 CFR 351.222(e)(1).

We preliminarily determine that the request from ACA meets all of the criteria under 19 CFR 351.222(e)(1) and that revocation is warranted pursuant to 19 CFR 351.222(b)(2). With regard to the criteria of 19 CFR 351.222(b)(2), our preliminary margin calculation shows ACA sold honey at not less than NV during the current review period. *See* ''Preliminary Results of the Review'' section below. In addition, ACA sold honey at not less than NV (*i.e.,* its dumping margins were zero or *de minimis*) in the two previous administrative reviews in which it was involved. *See Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 73 FR 24220 (May 2, 2008) (*2005–2006 Final Results*) and *Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part,* 74 FR 32107 (July 7, 2009) (*2006–2007 Final Results*).

Furthermore, based on our examination of ACA's sales data, we preliminarily determine that ACA sold subject merchandise in the United States in commercial quantities in each of the three consecutive years cited to support its request for revocation. *See* Memorandum to Richard Weible, Director, Office 7, ''Request by Asociacion de Cooperativas Argentinas (ACA) for Revocation in the Antidumping Duty Administrative Review of Honey from Argentina,'' dated December 18, 2009 (Revocation Memorandum). Thus, we preliminarily find ACA had zero or *de minimis* dumping margins for three consecutive years and sold subject merchandise in commercial quantities in each of these years. *See* 19 CFR 351.222(b)(2)(i)(A). As indicated above, ACA agreed to immediate reinstatement of the order, if the Department concludes that ACA sold the subject merchandise at less than normal value subsequent to revocation. *See* 19 CFR 351.222(b)(2)(i)(B). In sum, we preliminarily determine that the application of the antidumping duty order with respect to honey exported by ACA is no longer warranted for the following reasons: (1) The company had zero or *de minimis* margins for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and (3) the continued application of the order is not otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i). Therefore, we preliminarily find ACA qualifies for revocation of the order pursuant to 19 CFR 351.222(b)(2).[2] *See* Revocation Memorandum. If these preliminary findings are affirmed in our final results, we will revoke the order in part with respect to honey exported by ACA and, in accordance with 19 CFR 351.222(f)(3), terminate the suspension of liquidation for any merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after December 1, 2008, and instruct CBP to refund any cash deposits for such entries.

Verification

As provided in section 782(i) of the Act and 19 CFR 351.222(f)(2)(ii), from September 21, 2009, through September 25, 2009, we verified sales information provided by ACA, using standard procedures such as the examination of company sales and financial records. Our verification results are outlined in the public and proprietary versions of our verification reports, which are on file in the Central Records Unit (CRU) in room 1117 of the main Commerce Department building. *See* Memorandum to the File, ''Verification of the Third Country Market and Export Price Sales Responses of Asociacion de Cooperativas Argentinas (ACA) in the Antidumping Review of the Antidumping Duty Order on Honey from Argentina,'' dated November 25, 2009.

Product Comparison

In accordance with section 771(16) of the Act, we considered all sales of honey covered by the description in the ''Scope of the Review'' section of this notice, *supra,* which were sold in the appropriate third-country markets during the POR to be the foreign like product for the purpose of determining appropriate product comparisons to honey sold in the United States. For our discussion of market viability and selection of comparison market, *see* the ''Normal Value'' section of this notice, *infra.* We matched products based on the physical characteristics reported by ACA. Where there were no sales of identical merchandise in the third-country market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the antidumping duty questionnaire and instructions, or to constructed value (CV), as appropriate.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as export price (EP) or the constructed export price (CEP). The NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. *See also* 19 CFR 351.412(c)(1)(iii). For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act. *See* 19 CFR 351.412(c)(1)(ii). For EP, it is the starting price. *See* 19 CFR 351.412(c)(1)(i). In this review, ACA claimed only EP sales.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of

[2] Only exports by ACA in which ACA is the first party with knowledge of the U.S. destination of the merchandise will be covered by this revocation. *See 2006–2007 Final Results* (at footnote 1).

distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

ACA reported that all of its third-country sales were made to packers and all of its U.S. sales were made to importers, and that the LOT for each market corresponded to these two channels of distribution. The Department has determined that differing channels of distribution, alone, do not qualify as separate LOTs when selling functions performed for each customer class are sufficiently similar. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 71 FR 45017, 45022 (August 8, 2006) (unchanged in *Notice of Final Results of the Antidumping Duty Order on Certain Pasta from Italy,* 72 FR 7011 (February 14, 2007)); *see also* 19 CFR 351.412(c)(2). We find the selling functions ACA provided to packer customers in the third-country market and importer customers in the U.S. market were virtually the same, varying only by the degree to which testing and warranty services were provided. We do not find the varying degree of testing and warranty services alone sufficient to determine the existence of different marketing stages. Thus, we have preliminarily determined there is only one LOT for ACA's sales in both the comparison and U.S. markets, and have not made a LOT adjustment. *See* Memorandum to the File, ''Analysis Memorandum for Preliminary Results of the Antidumping Duty Review on Honey from Argentina for Asociacion de Cooperativas Argentinas'' (ACA Preliminary Analysis Memorandum), dated December 18, 2009.

Transactions Reviewed

19 CFR 351.401(i) states the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which the material terms of sale are established. For ACA, the Department used the reported shipment date as the date of sale for both the third-country and U.S. markets.[3] In the original investigation of honey from Argentina, we thoroughly examined the date of sale issue for ACA and found that changes to the essential terms of sale can and did occur between the contract date and the time of the actual shipment by ACA. The same was true for each subsequent POR, and we continued to use the date of shipment for ACA as the date of sale. Furthermore, in the instant POR, we found changes did, in fact, occur between contract date and shipment date with respect to the type of honey sold to the customer. Consequently, we preliminarily find that shipment date continues to be the appropriate date of sale with respect to ACA's sales in the U.S. and comparison markets.

Export Price and Constructed Export Price

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).'' Section 772(b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,'' as adjusted under sections 772(c) and (d). ACA has classified its U.S. sales as EP because all of its sales were made before the date of importation directly to unaffiliated purchasers in the U.S. market. For purposes of these preliminary results, we have accepted these classifications. We based EP on prices to unaffiliated customers in the United States and made adjustments for movement expenses.

Normal Value

1. Selection of Comparison Market

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared ACA's aggregate volume of home market sales of the foreign like product to its aggregate volume of U.S. sales of subject merchandise. Although ACA made some sales in the home market, the volume of ACA's home market sales was less than five percent of the aggregate volume of U.S. sales. As a result, we preliminarily find that ACA's home market does not provide a viable basis for calculating NV.

When sales in the home market are not suitable to serve as the basis for NV, section 773(a)(1)(B)(ii) of the Act provides that sales to a third-country market may be utilized if: (i) The prices in such market are representative; (ii) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (iii) the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the U.S. price. In addition to looking at volume, we also examined product similarity and found that for ACA, product similarity with respect to the largest market was equal to that of other third country markets. Thus, the Department determines that for ACA it is appropriate to select the largest third-country market for comparison purposes.

ACA reported its sales to Germany, the largest third-country market in terms of sales volume. The record shows the aggregate quantity of ACA's sales to Germany is greater than five percent of ACA's sales to the United States. In addition, the Department preliminarily determines there is no evidence on the record to demonstrate that ACA's prices in Germany are not representative. Further, we find there is no particular market situation that would prevent a proper comparison to EP. As a result, we preliminarily find ACA's sales to Germany serve as the most appropriate basis for NV.

Therefore, NV for ACA is based on its third-country sales to unaffiliated

[3] When shipment occurs prior to invoice date, as in the case of ACA's sales in both the U.S. and third-country markets, it is the Department's practice to use the shipment date as the date of sale rather than the invoice date. *See, e.g., Honey from Argentina: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part,* 70 FR 76766, 76768 (December 28, 2005), unchanged in *Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 71 FR 26333 (May 4, 2006); *see also Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada,* 68 FR 52741 (September 5, 2003) and the accompanying Issues and Decision Memorandum at Comment 3.

purchasers made in commercial quantities and in the ordinary course of trade. For NV, we used the prices at which the foreign like product was first sold for consumption in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same LOT as the EP. We calculated NV as noted in the ''Price-to-Price Comparisons'' section of this notice, *infra.*

2. Cost of Production

The petitioners alleged that ACA made comparison market sales of honey at prices less than the COP during the POR. *See* the petitioners' letters dated July 8, 2009. However, the Department determined that petitioners did not provide a reasonable basis on which to believe or suspect ACA had sold honey in the comparison market at prices below the COP during the POR. As a result, the Department did not initiate a sales-below-cost investigation for ACA. *See* ACA Cost Allegation Memorandum.

Price-to-Price Comparisons

We based NV on the third-country prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. Where appropriate, we made circumstance-of-sale adjustments for credit pursuant to section 773(a)(6)(C) of the Act. We also made adjustments, where applicable, for other direct selling expenses, in accordance with section 773(a)(6)(C) of the Act. We preliminarily reclassified some of ACA's reported direct selling expenses (namely, certain of its expenses related to testing) as indirect selling expenses, consistent with our treatment of testing expenses in the 2005–2006 and 2006–2007 administrative reviews. *See 2005–2006 Final Results* and the accompanying Issues and Decision Memorandum at Comment 1 and *2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 5. Thus, we have not included certain of ACA's testing expenses among the direct selling expenses for which we made adjustments in these preliminary results. For more information, *see* ACA Preliminary Analysis Memorandum.

Currency Conversions

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France,* 68 FR 47049, 47055 (August 7, 2003), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France,* 68 FR 69379 (December 12, 2003). However, the Federal Reserve Bank does not track or publish exchange rates for the Argentine peso. Therefore, we made currency conversions from Argentine pesos to U.S. dollars based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday through Sunday where necessary. For prices and expenses that ACA reported in Euros, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period December 1, 2007, through November 30, 2008:

Exporter	Weighted-average margin (percentage)
Asociacion de Cooperativas Argentinas	0.00

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting case briefs, rebuttal briefs, and written comments should provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), where entered values were reported, we calculated importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. Where entered values were not reported, we calculated importer-specific per-unit assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total quantity of the sales used to calculate those duties. These rates will be assessed uniformly on all ACA entries made during the POR. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

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 period of review produced by companies included in these final results of review for which the reviewed companies did not know their 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.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the company covered by this review (*i.e.,* ACA) will be the rate established in the final results of review, except that, if our preliminary determination to revoke in part becomes

final, no cash deposit will be required of ACA; (2) for any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate from the investigation (30.24 percent). *See Notice of Antidumping Duty Order; Honey From Argentina,* 66 FR 63672 (December 10, 2001). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 18, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–30689 Filed 12–24–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Final Results of June 2008 Through November 2008 Semi-Annual New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 28, 2009.

SUMMARY: The Department of Commerce (''the Department'') is conducting a new shipper review (''NSR'') of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China (''PRC'') covering the period June 1, 2008, through November 30, 2008. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–6412 or (202) 482–0650, respectively.

Background

On July 27, 2009, the Department published its preliminary results of new shipper review of the antidumping order on chlorinated isocyanurates from the PRC. *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of June 2009 through November 2008 Semi-Annual New Shipper Review,* 74 FR 37007 (July 27, 2009) (''*Preliminary Results*''). On August 17, 2009, Clearon Corporation and Occidental Chemical Corporation (''Petitioners''), in the underlying investigation, provided additional information on the appropriate surrogate values to use as a means of valuing the factors of production. On October 8, 2009, the Department received case briefs from Petitioners and respondent Juancheng Kangtai Chemical Co., Ltd. (''Kangtai''). On September 15 and 30, 2009, Kangtai submitted its responses to the Department's September 1 and 25, 2009, supplemental questionnaires. On October 15, 2009, Petitioners and Kangtai filed rebuttal briefs. We have conducted this new shipper review in accordance with section 751(a)(2)(B) of the Tariff act of 1930, as amended (''the Act''), and 19 CFR 351.214.

Scope of the Order

The products covered by this order are chlorinated isocyanurates, as described below: Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3{\cdot}2H_2O$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. This order covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dehydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this review are addressed in the memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the June 2008 through November 2008 Semi-Annual New Shipper Review of Chlorinated Isocyanurates from the People's Republic of China,'' dated concurrently with this notice (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU'') in room 1117 in the main Commerce Department building, and is also accessible on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculation for Kangtai. *See* Issues and Decision Memorandum at Comments 1–3.

We calculated surrogate financial ratios based on the financial statements for Aditya Birla Chemicals (India) Limited, an Indian producer of comparable merchandise, for the fiscal year ending March 31, 2009. *See* Issues and Decision Memorandum at Comment 1 and the Final SV Memo.

We have revised Kangtai's steam coal value. *See* Issues and Decision Memorandum at Comment 2, Memorandum to the File titled ''Analysis Memorandum for the Final Results: Juancheng Kangtai Chemical Company, Ltd.,'' dated December 18, 2009, and Final SV Memo.

Final Results of Review

We determined that the following dumping margin exists for the period June 1, 2008, through November 30, 2008.

Exporter	Producer	Rate
Juancheng Kangtai Chemical Co., Ltd/Juancheng Ouya Chemical Co., Ltd	Juancheng Kangtai Chemical Co., Ltd./Juancheng Ouya Chemical Co., Ltd.	20.54

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. For importers/customers of the respondent where the respondent did not report entered values, we have calculated importer/customer-specific antidumping duty assessment amounts based on the ratio of the total amount of antidumping duties calculated for the examined sales of subject merchandise to the total quantity of subject merchandise sold in those transactions. For importers/customers of the respondent where the respondent reported entered values, we have calculated an *ad valorem* rate for that importer/customer by dividing the total amount of antidumping duties calculated in the examined sales of subject merchandise by the total entered value of those transactions. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of NSR.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of NSR for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For shipments of subject merchandise produced and exported in the combinations listed above in the Final Results of Review section of this notice, the cash deposit rate will be the rate shown above; (2) for shipments of subject merchandise exported by Kangtai or Juancheng Ouya Chemical Co., Ltd. (''Ouya'') but not produced by either of these companies, the cash deposit rate will be the PRC-wide rate of 285.63 percent; (3) for shipments of subject merchandise produced by Kangtai or Ouya but exported by any party other than Kangtai or Ouya, the cash deposit rate will be the rate applicable to the exporter. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We will disclose the calculations performed for these final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

We are issuing and publishing these final results and notice in accordance with sections 751(a)(2)(B), 751(a)(2)(C), and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 17, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Issues and Decision Memorandum

Comment 1: Surrogate Financial Statements

Comment 2: Surrogate Value for Steam Coal

Comment 3: Affiliation and Collapsing of Kangtai and Ouya

[FR Doc. E9–30687 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RINs 0648–AW75 and 0648–AY47

Fisheries of the Northeastern United States; Atlantic Herring Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental Notice of Intent (NOI) to prepare an environmental assessment (EA) for Amendment 4 to the Atlantic Herring Fishery Management Plan (FMP) and environmental impact statement (EIS) for Amendment 5 to the Atlantic Herring FMP; request for comments.

SUMMARY: On May 8, 2008, the New England Fishery Management Council (Council), in cooperation with NMFS, announced its intent to prepare an EIS for Amendment 4 to the Atlantic Herring FMP to analyze the impacts of proposed management measures, which included measures to bring the FMP into compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements to specify annual catch limits (ACLs) and accountability measures (AMs). NMFS hereby notifies the public that only the ACL/AM components will move

forward as Amendment 4, and that the Council intends to prepare an EA for the action. All other proposed measures formerly included in Amendment 4, including the catch monitoring program for the herring fishery, measures to address river herring bycatch, criteria for midwater trawl access to groundfish closed areas, and measures to address interactions with the mackerel fishery, will now be considered in Amendment 5. These measures will be analyzed in an EIS. Because comments submitted during the scoping process for Amendment 4 referenced all measures now under consideration in Amendments 4 and 5, the Council is not seeking additional scoping comments from the public at this time.

DATES: Public comments on the supplementary NOI for Amendments 4 and 5 must be received no later than 5 p.m., Eastern Standard Time, on January 12, 2010.

ADDRESSES: Copies of supporting documents used by the Council are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, (978) 465–0492, or online at *http://www.nefmc.org.*

Written comments on the supplementary notice of intent for Amendments 4 and 5 may be sent by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal: *http://www.regulations.gov;*
- Mail to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope ''Comments on Herring Amendments 4 and 5;'' or
- Fax to Paul J. Howard, (978) 465–3116.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council initiated Amendment 4 to the Herring FMP for several reasons. The Council determined it was necessary to consider taking action to address issues related to the health of the herring resource throughout its range, how the resource is harvested, how catch/bycatch are accounted for, and the important role of herring as a forage fish in the Northeast region. These concerns are reflected in the high level of interest in managing this fishery by New England's commercial and recreational fishermen, eco-tourism and shoreside businesses, and the general public.

In addition, the MSA was reauthorized in 2007 and requires that NMFS and the Councils establish ACLs and AMs by the year 2011 for every federally managed fishery that is not subject to overfishing. The MSA also includes new provisions for the formation of Limited Access Privilege Programs (LAPPs). The former Amendment 4 was also intended to update the Herring FMP in a manner that is consistent with the new requirements of the MSA.

On May 8, 2008 (73 FR 26082), the Council published a NOI to prepare an EIS for an amendment that might include proposed measures to: improve long-term monitoring of catch (landing and bycatch) in the herring fishery, implement ACLs and AMs consistent with the MSA, and develop a sector allocation process or other LAPP for the herring fishery. The Council subsequently conducted three scoping meetings to discuss and take comments on alternatives to these measures. The first and second meetings were held in Portland, ME, on May 22, 2008, and June 2, 2008. The third meeting was held on June 10, 2008, in Atlantic City, NJ.

After considering the complexity of the issues under consideration in Amendment 4, the Council voted on June 23, 2009, to split the action into two amendments to ensure the statutory requirements for complying with provisions for ACLs and AMs will be met by the 2011 deadline. The ACL and AM component will move forward as Amendment 4. Because the establishment of ACLs and AMs is primarily a process-oriented change, rather than substantive change, the Council now intends to prepare an EA to analyze the impacts of these proposed measures.

The range of alternatives under consideration for ACLs include modifications to the current fishery management specification process for Atlantic herring to ensure the herring FMP's compliance with the MSA, as well as a No Action alternative. Modifications to the specifications process feature new terms and definitions for specifications, changes to the administrative process for setting specifications, and options to either maintain or eliminate specifications for joint venture processing (JVP), internal waters processing (IWP), total allowable level of foreign fishing (TALFF), and reserve total allowable catches (TACs). The range of alternatives for AMs include the No Action alternative, which uses inseason TAC adjustments and management area closures as AMs, and an alternative with options to add ACL overage deductions and a haddock catch cap as additional AMs.

All other measures formerly under consideration in Amendment 4 will now be considered in Amendment 5, and impacts associated with these proposed measures will be analyzed in an EIS. Measures considered under Amendment 5 include:

1. Catch-monitoring program;

2. Measures to address river herring bycatch;

3. Criteria for midwater trawl access to groundfish closed areas; and

4. Measures to address interactions with the Atlantic mackerel fishery.

Alternatives related to these measures are still under development.

The public will have the opportunity to comment on the measures and alternatives being considered by the Council for both amendments through public meetings and public comment periods required by the National Environmental Policy Act, the MSA, and the Administrative Procedure Act. The Council anticipates completing the EA for Amendment 4 in mid-2010, and the EIS for Amendment 5 by late 2011.

Public Hearing Schedule

The Council is conducting the following public hearings to solicit public comments on Amendment 4:

1. Wednesday, January 6, 2010, 5 p.m. to 7 p.m.; Massachusetts Department of Marine Fisheries Annisquam River Station, 30 Emerson Avenue, Gloucester, MA 01930; (978) 282–0308.

2. Thursday, January 7, 2010, 5 p.m. to 7 p.m.; Hampton Inn, One Hampton Way, Fairhaven, MA 02719; (978) 990–8500.

3. Monday, January 11, 2010, 5 p.m. to 7 p.m.; Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; (207) 775–2311.

Special Accommodations

The meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 18, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30690 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 0911251416–91417–01]

Precision Measurement Grants Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Precision Measurement Grants Program is soliciting applications for financial assistance for Fiscal Year (FY) 2010. The Precision Measurement Grants Program is seeking proposals for significant research in the field of fundamental measurement or the determination of fundamental constants.

DATES: Abbreviated proposals must be received at the address listed below no later than 5 p.m. Eastern Standard Time on February 5, 2010. Proposals received after this deadline will be returned with no further consideration. Finalists will be selected by approximately March 26, 2010. Only those applicants who have been selected as Finalists will be allowed to submit full proposals to NIST. All full proposals, whether hard copy or electronic submission, must be received no later than 5 p.m. Eastern Daylight Time on May 7, 2010.

ADDRESSES: Hard copies of abbreviated proposals and full proposals must be submitted to: Dr. Peter J. Mohr; Manager, NIST Precision Measurement Grants Program; National Institute of Standards and Technology; 100 Bureau Drive, Stop 8420; Gaithersburg, MD 20899–8420. Electronic submissions of abbreviated proposals may be sent by e-mail to: *mohr@nist.gov.* Abbreviated proposals will not be accepted through the Grants.gov Web site. Electronic submissions of full proposals may be sent by e-mail to *mohr@nist.gov* or uploaded to *http://www.Grants.gov.*

For electronic submissions of the abbreviated proposal, the SF–424 (R&R) must be a scanned signed form, and must be submitted by e-mail to *mohr@nist.gov.* A fillable version of the SF–424 (R&R) form can be found at *http://physics.nist.gov/ResOpp/grants/2010/424.pdf.*

FOR FURTHER INFORMATION CONTACT: A paper copy of the FFO may be obtained by calling (301) 975–6328. Technical questions should be addressed to: Dr. Peter J. Mohr at the address listed in the Addresses section above, or at *Tel.:* (301) 975–3217; *E-mail: mohr@nist.gov*; Web site: *http://physics.nist.gov/pmg.* Grants Administration questions should be addressed to: Grants and Agreements Management Division; National Institute of Standards and Technology; 100 Bureau Drive, Stop 1650; Gaithersburg, MD 20899–1650; *Tel.:* (301) 975–6328. For assistance with using Grants.gov contact *support@grants.gov* or call 800–518–4726.

SUPPLEMENTARY INFORMATION:

Electronic access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically.

Authority: The authority for the *Precision Measurement Grants Program* is as follows: As authorized by 15 U.S.C. 272(b) and (c), NIST conducts directly, and supports through grants, a basic and applied research program in the general area of fundamental measurement and the determination of fundamental constants of nature.

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609.

Program Description: The National Institute of Standards and Technology (NIST) announces that the *Precision Measurement Grants Program* is soliciting applications for financial assistance for FY 2010. The *Precision Measurement Grants Program* is seeking proposals for significant research in the field of fundamental measurement or the determination of fundamental constants. Since 1970, NIST, as part of its research program, has awarded Precision Measurement Grants primarily to universities and colleges so that faculty may conduct significant research in the field of fundamental measurement or the determination of fundamental constants. NIST sponsors these grants and cooperative agreements primarily to encourage basic, measurement-related research in universities and colleges and other research laboratories and to foster contacts between NIST scientists and those faculty members of academic institutions and other researchers who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for researchers to pursue new ideas for which other sources of support may be difficult to find. There is some latitude in research topics that will be considered under the *Precision Measurement Grants Program.* The key requirement is that the proposed project is consistent with NIST's ongoing work in the field of basic measurement science.

Funding Availability: NIST anticipates spending $100,000 this year for two new grants at $50,000 each for the first year of the research projects. NIST issues this notice subject to the appropriations made available under the current continuing resolution, H.R. 2918, ''Continuing Appropriations Resolution, 2010,'' Public Law 111–68, as amended by H.R. 2996, ''Further Continuing Appropriations, 2010,'' Public Law 111–88. NIST anticipates making awards for the programs listed in this notice provided that funding for the programs is continued beyond December 18, 2009, the expiration of the current continuing resolution. In no event will NIST or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of agency priorities. Publication of this announcement does not oblige NIST or the Department of Commerce to award any specific project or to obligate any available funds.

Award start dates for new grants are expected to be October 1, 2010. Applicants should propose multi-year projects for up to three years at no more than $50,000 per year. NIST anticipates spending $100,000 this year for two new grants at $50,000 each for the first year of the research projects. NIST may award both, one, or neither of these new awards. Second and third year funding will be at the discretion of NIST, based on satisfactory performance, continuing relevance to program objectives, and the availability of funds. NIST plans to fund the awards as grants. If collaboration by NIST scientists in the scope of work is appropriate for any award, a cooperative agreement will be issued instead.

Cost Share Requirements: The Precision Measurement Grants Program does not require any matching funds.

Eligibility: Eligible applicants are institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; international organizations; and Federal agencies with appropriate legal authority.

Application Requirements

In accordance with the requirements set forth in the Content and Form of Application Submission section of the FFO, all applicants must submit an abbreviated proposal (one original and two signed copies), containing a completed SF–424 (R&R) form, a description of the proposed project,

including sufficient information to address the evaluation criteria, with a total length of no more than five (5) double spaced pages (excluding SF–424 (R&R)), to one of the addresses given above in the **ADDRESSES** section.

Only those applicants who have been selected as finalist will be invited to submit full proposals, containing a concise title and a 100–200 word abstract; an explanation of the research project itself, its importance, its relationship to NIST's interest and its feasibility within the time and budget constraints; a curriculum vita; a list of the principal investigator's most recent and relevant publications; a budget and detailed budget narrative for each year of the proposal in $50,000 increments up to three years; a budget form for each year; an indication if supported by other sources of funding and make clear what NIST funds will enable the applicant to achieve that could not be achieved with the other sources of funds; a list of all current and pending proposals for similar research, including the amounts requested and the source that was or is considering it; and completed forms SF–424, SF–424A, SF–424B, SF–LLL and CD–511. The full proposal may not exceed a maximum total of 10 double-spaced pages, exclusive of the budget sheet and required Standard Forms and Department of Commerce Forms.

Although applicants submitting paper applications are not required to submit more than three copies of the proposal, the normal review process for the Precision Measurement Grants Program utilizes ten (10) copies. Applicants are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5″ x 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the required Standard and Department forms are needed from finalists.

Evaluation Criteria: The evaluation criteria to be used in evaluating the abbreviated proposals and full proposals are:

1. The importance of the proposed research—Does it have the potential of answering some currently pressing question or of opening up a whole new area of activity?

2. The relationship of the proposed research to NIST's ongoing work—Will it support one of NIST's current efforts to develop a new or improved fundamental measurement method or physical standard, test the basic laws of physics, or provide an improved value for a fundamental constant?

3. The feasibility of the research and the potential impact of the grant—Is it likely that significant progress can be made in a three year time period with the funds and personnel available and that the funding will enable work that would otherwise not be done with existing or potential funding?

4. The qualifications of the applicant—Does the educational and employment background and the quality of the research, based on recent publications, of the applicant indicate that there is a high probability that the proposed research will be carried out successfully?

Each of these factors is given equal weight in the evaluation process.

Review and Selection Process: All abbreviated proposals and full proposals received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive abbreviated proposals and full proposals will not be reviewed for technical merit. The Program will retain one copy of each non-responsive abbreviated proposal and full proposal for three years for record keeping purposes. The remaining copies will be destroyed.

Eight independent, objective individuals, at least half of whom are NIST employees, and who are knowledgeable about the scientific areas that the program addresses will conduct a technical review of each abbreviated proposal, based on the evaluation criteria described in the Evaluation Criteria section for this program. Each reviewer will evaluate and rank the proposals. The proposals will then be ranked based on the average of the reviewers' rankings. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but the ranking will be determined on an individual basis, not as a consensus.

The Chief of the Atomic Physics Division of the Physics Laboratory, the selecting official, will then select approximately four to eight finalists. In selecting finalists, the selecting official will take into consideration the results of the reviewers' evaluations, including rank, and relevance to the Program Description described in this Notice and the FFO. Applicants not selected as finalists will be notified in writing.

Only those applicants who have been selected as a finalist will be invited to submit a full proposal. The same independent reviewers that reviewed the abbreviated proposals will then evaluate the full proposals based on the same evaluation criteria, and the proposals will be ranked as previously described. In selecting proposals that will be recommended for funding, the same selecting official will take into consideration the results of the reviewers' evaluations, including rank and relevance to the program objectives described in the Program Description section of this Notice.

The final approval of selected applications and award of grants will be made by the NIST Grants Officer based on compliance with application requirements as published in this Notice and the FFO, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible.

Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award.

The decision of the Grants Officer is final.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696), are applicable to this notice. On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit Employer/Taxpayer Identification Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS number MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS number are consistent with the information on the CCR and ASAP.

Collaborations with NIST Employees: All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST

employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. 200–212, 37 CFR Part 401, 15 CFR 14.36, and in Section B.21 of the Department of Commerce Pre-Award Notification Requirements 73 FR 7696 (February 11, 2008). Questions about these requirements may be directed to the Office of the Chief Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Collaborations Making Use of Federal Facilities: All applications should include a description of any work proposed to be performed using Federal Facilities. If an applicant proposes use of NIST facilities, the statement of work should include a statement of this intention and a description of the facilities. Any use of NIST facilities must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the availability of the facilities and approval of the proposed usage. Any unapproved facility use will be stricken from the proposal prior to the merit review. Examples of some facilities that may be available for collaborations are listed on the NIST Technology Services Web site, *http://ts.nist.gov/*.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, 424 (R&R), SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 4040–0001, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, the Food and Drug Administration, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current registration filed with DHHS and to be performed by institutions possessing a current registration filed with DHHS and to be performed by institutions possessing a current, valid Federal-wide Assurance (FWA) from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

President Obama has issued Executive Order No. 13,505 (74 FR. 10667, March 9, 2009), revoking previous Executive Orders and Presidential statements regarding the use of human embryonic stem cells in research. On July 30, 2009, President Obama issued a memorandum directing that agencies that support and conduct stem cell research adopt the ''National Institutes of Health Guidelines for Human Stem Cell Research'' (NIH Guidelines), which became effective on July 7, 2009, ''to the fullest extent practicable in light of legal authorities and obligations.'' On September 21, 2009, the Department of Commerce submitted to the Office of Management and Budget a statement of compliance with the NIH Guidelines. In accordance with the President's memorandum, the NIH Guidelines, and the Department of Commerce statement of compliance, NIST will support and conduct research using only human embryonic stem cell lines that have been approved by NIH in accordance with the NIH Guidelines and will review such research in accordance with the Common Rule and NIST implementing procedures, as appropriate. NIST will not support or conduct any type of research that the NIH Guidelines prohibit NIH from funding. NIST will follow any additional polices or guidance issued by the current Administration on this topic.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals'' which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR Parts 1, 2, and 3, and if appropriate, 21 CFR Part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: Funding for the programs listed in this notice is contingent upon the availability of Fiscal Year 2010 appropriations. The Department of Commerce and NIST will not be held responsible for application preparation costs. Publication of this announcement does not oblige NIST or the Department of Commerce to award any specific project or to obligate any available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: December 22, 2009.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. E9–30658 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, January 20, 2010, from 1 p.m. until 5 p.m. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, January 20, 2010, from 1 p.m. until 5 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, MD 20899, Building 101, Room LR–B. Please see admittance instructions in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Bowen, ISPAB Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, *telephone:* (301) 975–2938.

SUPPLEMENTARY INFORMATION:

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, January 20, 2010, from 1 p.m. until 5 p.m. All sessions will be open to the public. The ISPAB was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html/.*

The agenda is expected to include the following items:

—Cloud Computing and the U.S. Government Trusted Internet Connection (TIC) Program working together to provide service and security.

—Board discussion on Certification and Accreditation of federal information systems, current models and discussion on recommending using an initial and continuous monitoring model.

—Applicability of current authentication models for new federal priorities and recommendations for expanded research in identification and authentication.

—Board discussion and recommendations on the Office of Management and Budget proposed security metrics for federal agencies.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the ISPAB Secretariat at the telephone number indicated above. The Board is interested in public comments on the agenda as a whole with specific interest in the following topics due to their impact on security and privacy as new technologies, potential areas of success for the U.S. Government if conducted properly and areas that have a current significant relevance to the Federal Government. The Board is specifically interested in comments concerning the following subjects:

—Cloud Computing and the U.S. Government Trusted Internet Connection (TIC) Program

—U.S. Government Acquisitions Role in Security

—Research and Development for Secure Software

—Security Measurements and Metrics

In addition, written statements are invited and may be submitted to the ISPAB at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Approximately 15 seats will be available for the public and media.

All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, nationality and e-mail address to Ms. Pauline Bowen no later than c.o.b. Monday, January 18, 2010 for visitor admittance. Non-U.S. Citizens are welcome to attend with the public but additional information will be required to be granted access to NIST and the meeting location. Ms. Bowen's e-mail address is *Pauline.bowen@nist.gov* and her phone number is (301) 975–2938.

Dated: December 22, 2009.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. E9–30655 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT47

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee, in January, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 13, 2010, at 9:30 a.m.

ADDRESSES: This meeting will be held at the Courtyard by Marriott, 1000 Market Street, Portsmouth, NH 03801; telephone: (603) 436–2121; fax: (603) 430–7666.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will consider Scientific and Statistical Committee (SSC) feedback on the Swept Area Seabed Impact (SASI) model, which will be used to evaluate the adverse effects of fishing on Essential Fish Habitat. The Committee will also review the most current SASI model results, including the realized fishing effort evaluation requested by the SSC as well as review progress towards completion of the committee's October 2009 tasking. Lastly, the Committee will review draft comments on the Federal Ocean Policy Task Force(s Interim Framework for Effective Coastal and Marine Spatial Planning. Other topics may be discussed at the Chair's discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 22, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30614 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT46

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team (CPSMT) will hold a meeting that is open to the public.

DATES: The CPSMT will meet on Tuesday, January 12, 2010 and Wednesday, January 13, 2010, from 8 a.m. to 5 p.m., and again on Thursday, January 14, 2010, from 8 a.m. until business for that day is completed.

ADDRESSES: The CPSMT meeting will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, Green Room, 8604 La Jolla Shores Drive, La Jolla, CA 92037; telephone: (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mike Burner, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop alternative amendments to the Pacific Council's Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) in response to new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) including, overfishing levels (OFLs), acceptable biological catch (ABC), and annual catch limits (ACLs). The CPSMT will discuss CPS FMP amendment alternatives and develop a work plan for completing review materials for the March 2010 meeting of the Pacific Council. The CPSMT will also elect officers for 2010, discuss the 2010 Stock Assessment and Fishery Evaluation document, and address other issues relating to CPS management.

Although non-emergency issues not contained in the meeting agenda may come before the CPSMT for discussion, those issues may not be the subject of formal CPSMT action during this meeting. CPSMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 22, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30613 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT45

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Monday, January 11, 2009 from 1 p.m. until business for the day is completed. The GMT meeting will reconvene Tuesday, January 12 through Friday, January 15, from 8:30 a.m. until business for each day is completed.

ADDRESSES: The GMT meeting will be held at the Pacific Fishery Management Council office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames or Mr. John DeVore, Groundfish Management Coordinators; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GMT working meeting is to (1) develop models and recommendations for analyzing harvest specifications and management measures for 2011–12 west coast

groundfish fisheries and (2) review and further develop analyses relating to Amendment 23: annual catch limits and accountability measures. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's role will be development of the environmental analyses and recommendations for consideration by the Council at its March meeting in Sacramento, CA and at its April meeting in Portland, OR.

Although non-emergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 22, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30612 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT44

Gulf of Mexico Fishery Management Council; Public Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of scoping meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene Scoping Meetings on proposed Amendment 32, dealing primarily with gag and red grouper.

DATES: The scoping meetings will be held on January 11, 2010 through January 19, 2010 at eight locations throughout the Gulf of Mexico. For specific dates, times and subjects, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The scoping meetings will be held in the following locations: St. Petersburg, Key West, Ft. Myers and Panama City, FL, Biloxi, MS, Galveston, TX, New Orleans, LA and Orange Beach, AL. For specific dates, times and subjects see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamic Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council has scheduled eight scoping meetings on proposed Amendment 32, dealing primarily with gag and red grouper.

A SEDAR Assessment Workshop was convened during March 30 - April 2, 2009 at the National Marine Fisheries Service Southeast Fisheries Science Center in Miami, FL to update the benchmark assessments of Gulf of Mexico gag and red grouper conducted in 2006 as SEDAR 10 and SEDAR 12 respectively. Two reports detailing the results of the workshop, one for each stock, were published on August 3, 2009. The red grouper update assessment found that the stock was neither overfished nor undergoing overfishing. However, the 2008 spawning stock biomass had declined to just above its minimum stock size threshold, and the current fishing mortality rate was above the rate associated with fishing at optimum yield. As a result, the Scientific and Statistical Committee recommended an Acceptable Biological Catch to a level that is below the current annual catch limit. Consequently, a reduction in the annual catch limit and annual catch target is needed to bring management into compliance with the new Acceptable Biological Catch. The gag update assessment found that the gag stock was overfished and undergoing overfishing, with the 2008 spawning stock size at 47 percent of the minimum stock size threshold, and a current fishing mortality rate 2.47 times greater than the maximum fishing mortality threshold. A rebuilding plan is necessary to end overfishing of gag and to rebuild the stock.

Potential actions for scoping include establishing a rebuilding plan for gag, revising annual catch limits and optionally annual catch targets for gag and red grouper, revising accountability measures for gag and red grouper, making adjustments to the multi-use shares in the individual fishing quota system for the commercial grouper fishery, addressing commercial bycatch issues including consideration of fish traps as an allowable gear to reduce bycatch in the red grouper fishery, addressing recreational bycatch issues including a keep the first gag caught strategy, recreational data collection and monitoring programs such as a fish tag program or a fish stamp program, and time and area closures to direct fisheries away from gag concentrations and toward red grouper. Potential actions for scoping will also include a number of public-proposed initiatives to improve management and data collection of grouper fisheries including recreational sector separation of the for-hire and private recreational sectors, vessel monitoring systems for for-hire recreational vessels, a telephone or web based reporting system for recreational fisheries, electronic logbooks, and grouper endorsements. The public is welcome to suggest other actions for management or data collection and monitoring of gag and red grouper fisheries that are not listed in the scoping document.

The eight scoping meetings will begin at 6 p.m. and conclude at the end of public testimony or no later than 9 p.m. at the following locations:

****Monday, January 11, 2010*, Monroe County Harvey Government Center, 1200 Truman Avenue, Key West, FL 33040;

Monday, January 11, 2010, Holiday Inn, 5002 Seawall Blvd., Galveston, TX 77550, telephone: (409) 740–3581;

***Tuesday, January 12, 2010*, Hilton, 950 Lake Carillon Drive, St. Petersburg, FL 33716, telephone: (727) 540–0050;

Tuesday, January 12, 2010, Best Western, 7921 Lamar Poole Road, Biloxi, MS 39532, telephone: (228) 875–7111;

Wednesday, January 13, 2010, Fairfield Inn and Suites, 3111 Loop Road, Orange Beach, AL 36561, telephone: (251) 513–4444;

****Wednesday, January 13, 2010*, Ramada, 4760 S. Cleveland Avenue, Ft. Myers, FL 33907, telephone: (239) 275–1111;

***Thursday, January 14, 2010*, The Boardwalk, 9600 S. Thomas Drive, Panama City, FL 32408, telephone: (850) 234–2154;

Tuesday, January 19, 2010, Crowne Plaza, 2829 Williams Blvd., Kenner, LA 70062, telephone: (504) 467–5611.

* **NOTE** a scoping meeting format change for these meetings. Two rooms will be used - one room where participants can get answers to

questions about the proposed amendment, and the other room for participants to provide input.

** **NOTE** a scoping meeting format change for these meetings. An informal roundtable discussion regarding the proposed amendment will be held during the first hour of the meeting, from 6 p.m. - 7 p.m. Public input will be taken beginning at 7 p.m. and will end no later than 9 p.m.

Copies of the scoping document can be obtained by calling the Council office at (813) 348–1630.

Special Accommodations

These meetings are 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: December 22, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30611 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT43

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: A joint meeting of the Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) and its Black Sea Bass (BSB) Monitoring Committee will be held as a public meeting via Webinar. Immediately following completion of the joint SSC / BSB Monitoring Committee meeting, the SSC will be convened separately to conduct its deliberations independent of the Monitoring Committee.

DATES: The meeting will be held on Friday, January 8, 2010, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held via Webinar. Details about online participation in the Webinar can be obtained by visiting the Council's website (*www.mafmc.org*). Members of the public may also access the Webinar at the Council office located at Room 2115 of the Frear Federal Building, 300 S. New Street, Dover, DE 19904.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: Topics to be discussed during the meeting include a reconsideration of the SSC's Acceptable Biological Catch (ABC) recommendation for black sea bass for the 2010 fishing year and a framework for ABC control rule specification for inclusion in the Council's Annual Catch Limit / Accountability Measures (ACL/AM) Omnibus Amendment which is currently under development.

Special Accommodations

The listening station at the Council's office is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: December 22, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30610 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT26

Council Coordination Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: NMFS will host a meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors in January 2010. The intent of this meeting is to discuss issues of relevance to the Councils, including FY 2010 budget allocations and budgetary planning, the Ocean Policy Task Force, Marine Spatial Planning, the draft Catch Shares Task Force Report, and implementation of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The meeting will begin at 9 a.m. on Wednesday, January 13, 2010, recess at 5:30 p.m. or when business is complete; and reconvene at 8:30 a.m. on Thursday, January 14, 2010, and adjourn by 4:30 p.m. or when business is complete.

ADDRESSES: The meeting will be held at the Hotel Monaco, 700 F Street, NW., Washington, DC 20004, telephone 202–628–7177, fax 202–628–7277.

FOR FURTHER INFORMATION CONTACT: William D. Chappell: telephone 301–713–2337 or e-mail at *William.Chappell@noaa.gov*; or Tara Scott: telephone 301–713–2337 or e-mail at *Tara.Scott@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 established the Council Coordination Committee (CCC) by amending Section 302 (16 U.S.C. 1852) of the Magnuson-Stevens Act. The committee consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils authorized by the Magnuson-Stevens Act or other Council members or staff. NMFS will host this meeting and provide reports to the CCC for its information and discussion. The main topics of discussion will be the FY2010 budget allocation and budgetary planning, the Ocean Policy Task Force, Marine Spatial Planning, the draft Catch Shares Task Force Report, implementation of the provisions of the MSRA, and related guidance and technical regulatory changes. All sessions are open to the public.

Proposed Agenda

January 13, 2010

9 a.m. Morning Session Begins.
9–10:15 Welcome comments and open session with Councils.
10:15–10:30 Break.
10:30–11 Open Session with Councils (Continued).
11–11:30 National Environmental Policy Act (NEPA) Update.
11:30–1 Lunch.
1 Afternoon Session Begins.
1—2:30 Catch Shares Task Force Report.
2:30–3:30 Budget issues (General update and FY 2010 allocation).
- Council base funding.
- Limited Access Privilege Programs funding.
- Stipends.

3:30–3:45 Break.

3:45–4:45 Budget issues (Continued).
4:45–5:15 Gap Analysis.
5:15 Adjourn for the Day.

Thursday January 14, 2010

8:30 a.m. Morning Session Begins.
8:30–9:15 Essential Fish Habitat 5–Year Review.
9:15 –10:15 National Scientific and Statistical Committees (SSC) Meeting Report.
10:15–10:30 a.m. Break.
10:30–11:30 p.m. Ocean Policy Task Force and Marine Spatial Planning.
11:30–1 Lunch.
1 Afternoon Session Begins.
1–2 Marine Recreational Information Program (MRIP) Update.
2–3 Other Issues.
- Communications.
- Posting of meeting transcripts.
- Statement of Organizations, Practices and Procedures (SOPPs).

3–3:15 Break.
3:15–3:45 May Council Coordination Committee (CCC) Agenda.
3:45–4 Wrap-up.
4 p.m. Adjourn.

The order in which the agenda items are addressed may change. The CCC will meet as late as necessary to complete scheduled business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tara Scott at 301–713–2337 x177 at least 5 working days prior to the meeting.

Dated: December 22, 2009.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30694 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–22–P

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

(11/10/2009 through 12/17/2009)

Firm	Address	Date accepted for filing	Products
Ask Products, Inc	544 N. Highland Avenue, Aurora, IL 60506.	11/10/2009	Copper and aluminum connectors for electrical power uses, including terminal lugs, electrical splices, grounding straps and cables.
Pipeline Equipment, Inc.	8403 South 89th West, Tulsa, OK 74131.	11/30/2009	Oil and gas transfer and recovery products.
Window Technology, Inc. d/b/a WinTech.	201 Industrial Drive, Monett, MO 65708–0480.	12/4/2009	Aluminum & vinyl windows, HVAC access doors, aluminum louvers & various fabricated aluminum components.
Gray Manufacturing Company, Inc.	3501 S. Leonard Road, St. Joseph, MO 64503.	12/4/2009	Hydraulic & pneumatic jack/lift systems.
Vektek, Inc	1334 E. 6th Avenue, P.O., Emporia, KS 66801.	12/1/2009	Hydraulic and pneumatic work holding equipment and components.
Capital Electro-Circuits, Inc.	7845–I Airpark Road, Gaithersburg, MD 20879.	12/14/2009	Printed circuit boards.
Golden Chair Inc	958 Washington Road, Houlka, MS 38850.	12/14/2009	Upholstered chairs.
Mike's Micro Parts, Inc.	1901 Potrero Ave., South El Monte, CA 91733.	12/16/2009	Machined castings and parts for industrial, commercial and nuclear pumps, valves, fluid products, medical equipment, electronics, transportation, and food machinery products.
Optikos Corporation.	107 Audubon Road, Bldg. 3, Wakefield, MA 01880.	12/15/2009	Optical instruments and lenses.
Timber Truss Housing Systems, Inc.	PO Box 996, 525, McClelland St. Salem, VA 24153.	12/14/2009	Housing products: trusses, floor trusses, wall panels, door units, windows, siding, shingles, cabinets, flooring, lumber, trim roofing, plywood, and countertops.
Harbec Plastics, Inc.	369 Route 104, Ontario, NY 14519–8999.	12/15/2009	Injection or compression type molds and tooling for plastics parts.
Pro-Tech Interconnect Solutions, LLC.	4300 Peavey Rd., Chaska, MN 55318–.	11/30/2009	Printed circuit boards.
Diemasters Manufacturing, Inc.	2100 Touhy, Elk Grove, IL 60126	11/10/2009	Die stamped metal parts.
MRT Sureway Inc. d.b.a. Sureway Tool.	2959 Hart Drive, Franklin Park, IL 60131.	11/30/2009	Metal display racks and related components.

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 Trade Adjustment Assistance for Firms Division, Room 7106, 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: December 18, 2009.

Bryan Borlik,

Program Director.

[FR Doc. E9–30643 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Extension of Time Limit for Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* December 28, 2009.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani, 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) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on certain welded carbon steel standard pipes and tubes from India on May 12, 1986. See *Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India*, 51 FR 17384 (May 12, 1986). In response to an opportunity to request an administrative review, Wheatland Tube Company, the petitioner in this proceeding, requested that the Department conduct an administrative review with respect to ten Indian producers. On June 24, 2009, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India for the period May 1, 2008, through April 30, 2009. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009). The preliminary results of this administrative review are currently due no later than January 31, 2010.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published in the **Federal Register**. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of January 31, 2010, because we require additional time to analyze a number of complex cost–accounting and corporate–affiliation issues relating to this administrative review that have been raised by parties to the proceeding. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of this review by 92 days to May 3, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: December 17, 2009.

John M. Andersen

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations

[FR Doc. E9–30650 Filed 12–24–09; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* January 29, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 11/6/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (74 FR No. 214) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Custodial Services—Santa Maria, CA, Forest Service Santa Lucia Ranger District, 1616 Carlotti Drive, Santa Maria, CA.

NPA: VTC Enterprises, Santa Maria, CA.

Contracting Activity: Forest Service, Angeles

National Forest, Arcadia, CA.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. E9–30621 Filed 12–24–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and service to be furnished by nonprofit agencies employing persons who are blind.

Comments Must Be Received On or Before: 1/29/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions: If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. *The major factors considered for this certification were:*

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 9905–00–NIB–0141—Rack Cards, Double-Sided, DeCA Marketing POS Kit.
NSN: 9905–00–NIB–0142—Banner, DeCA Marketing Signage Kit, 3′ × 10′ Each.
NSN: 9905–00–NIB–0143—Buttons, DeCA Marketing Signage Kit, 3″, Each.
NSN: 9905–00–NIB–0144—Dangler, Round, Double-Sided, DeCA POS Signage.
NSN: 9905–00–NIB–0145—Poster, DeCA Marketing Signage Kit, 20′ × 30″.
NSN: 9905–00–NIB–0146—Kit, DeCA Marketing Signage, Point of Sale (POS).
NPA: Envision, Inc., Wichita, KS.
Contracting Activity: Defense Commissary Agency (DECA), Ft. Lee, VA.

Service

Service Type/Location: Landscaping Services, 761st Tank Battalion Ave, Fort Hood, TX, NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX, Contracting Activity: DEPT OF THE ARMY, XR W6BB ACA HOOD, Ft. Hood, TX.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. E9–30620 Filed 12–24–09; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Monday, January 25, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review Meeting.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–30840 Filed 12–23–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 29, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–30842 Filed 12–23–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., January 22, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–30845 Filed 12–23–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, January 15, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9–30850 Filed 12–23–09; 4:15 pm]
BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, January 8, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9–30851 Filed 12–23–09; 4:15 pm]
BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Wednesday January 20, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9–30848 Filed 12–23–09; 4:15 pm]
BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Act: Notice of Commission Action on the Stay of Enforcement of Testing and Certification Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Revision of terms of stay of enforcement.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'') is announcing its decision to revise the terms of its stay of enforcement of certain testing and certification provisions of section 14 of the Consumer Product Safety Act (''CPSA'') as amended by section 102(a) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'').[1] On February 9, 2009, the Commission announced a stay of enforcement that would remain in effect until February 10, 2010, at which time the Commission would vote to terminate the stay. Through this notice, the Commission announces changes to the stay including when the stay will lift as to certain testing and certification requirements and how the testing and certification requirements will be implemented or otherwise become effective with regard to specific products subject to the testing and certification requirements of the CPSIA.

DATES: Pursuant to this revision of terms, the stay of enforcement, as it pertains to most products, expires on February 10, 2010. Details regarding the stay of enforcement relative to specific products and other dates can be found in part II of this document.

FOR FURTHER INFORMATION CONTACT: John ''Gib'' Mullan, Assistant Executive Director for Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *jmullan@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. What Statutory Requirements are at Issue?

In the **Federal Register** of February 9, 2009 (74 FR 6396), the Commission announced that it would stay its enforcement with respect to certain testing and certification requirements in section 14(a)(1), (a)(2), and (a)(3) of the CPSA, as amended by section 102 of the CPSIA.

In brief, sections 14(a)(1), (a)(2), and (a)(3) of the CPSA establish testing and certification requirements for most consumer products regulated by or under the statutes enforced by the Commission, including children's products. Section 14(a)(1) of the CPSA requires every manufacturer of a product (and the private labeler of such product if such product bears a private label) that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission and which is imported for consumption or warehousing or distributed in commerce, to issue a certificate. The manufacturer must certify, based on a test of each product or upon a reasonable testing program, that the product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other law enforced by the Commission. The certificate must specify each such rule, ban, standard, or regulation applicable to the product.

For children's products, section 14(a)(2) of the CPSA states that, before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, the manufacturer (and the private labeler if the children's product bears a private label) must submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a CPSC-recognized third party conformity assessment body accredited under section 14(a)(3) of the CPSA (''recognized third party test laboratory''). The recognized third party test laboratory must test the children's product for compliance with such children's product safety rule. Based on the testing, the manufacturer (or private labeler) must issue a certificate that certifies that the children's product complies with the children's product safety rule based on the assessment of a recognized third party laboratory accredited to conduct such tests.

Section 14(a)(3) of the CPSA establishes a schedule for implementing third party testing and includes a time line for the accreditation of third party conformity assessment bodies. Section 14(a)(3)(A) of the CPSA states that the third party testing requirement applies to any children's product manufactured more than 90 days after the Commission has established and published a ''notice of requirements'' for the accreditation of

[1] The Commission voted 5–0 to publish this notice, with changes, in the **Federal Register**.

Chairman Inez M. Tenenbaum and Commissioners Thomas H. Moore, Nancy Nord, Robert Adler and Anne Northup issued statements, and their statements can be found at *http://www.cpsc.gov.*

third party conformity assessment bodies to assess conformity with a children's product safety rule. As of the date of publication of this notice, the Commission has issued six notices of requirements; the notices of requirements, and their respective effective dates, are as follows:

- Lead paint (73 FR 54564 (September 22, 2008), effective for products manufactured after December 21, 2008);
- Full-size and non-full size cribs and pacifiers (73 FR 62965 (October 22, 2008), effective for products manufactured after January 20, 2009);
- Small parts (73 FR 67838 (November 17, 2008), effective for products manufactured after February 15, 2009);
- Metal components of children's metal jewelry (73 FR 78331 (December 22, 2008), effective for products manufactured after March 23, 2009);
- Bicycle helmets, dive sticks and similar articles, rattles, bicycles, and bunk beds (74 FR 45428 (September 2, 2009), effectiveness stayed at least until February 10, 2010)); and
- Limits on total lead in metal children's products and in non-metal children's products (74 FR 55820 (October 29, 2009), effectiveness stayed at least until February 10, 2010).

Additionally, section 14(g) of the CPSA imposes certain requirements for certificates, and CPSC regulations, at 16 CFR part 1110, limit the testing and certification requirement to importers and domestic manufacturers. The certification requirements of section 14(g) apply only to products manufactured after the date such certification requirement becomes effective and do not apply to products held in inventory. Thus, for products below where the stay is lifted effective February 10, 2010, certification will only be required for products manufactured beginning on February 11, 2010.

B. What Did the Stay of Enforcement Cover? Why Did the Commission Issue the Stay?

Rather than list the consumer product safety rules or similar rules, bans, standards, or regulations under any other law enforced by the Commission that were covered by the stay of enforcement on testing and certification, the stay instead described the rules, bans, standards, or regulations that were not covered by the stay of enforcement. The list consisted of the following:

(1) The requirements of any CPSC regulation, or of section 14(a) of the CPSA as it existed before the CPSIA, for product testing and certification, including, *inter alia,* existing requirements for certification of automatic residential garage door openers, bicycle helmets, candles with metal core wicks, lawnmowers, lighters, mattresses, and swimming pool slides;

(2) The certifications required due to certain requirements of the Virginia Graeme Baker Pool & Spa Safety Act being defined as consumer product safety ''rules;''

(3) The certifications of compliance required for all-terrain vehicles (ATVs) in section 42(a)(2) of the CPSA;

(4) Any voluntary guarantees provided for in the Flammable Fabrics Act (''FFA'') or otherwise (to the extent a guarantor wishes to issue one);

(5) The requirements on manufacturers, including importers, of children's products to use third party laboratories to test and to certify, on the basis of that testing, compliance of children's products with:

- Requirements applicable to the lead content of paint and other surface coatings effective for products *manufactured after* December 21, 2008;
- Requirements applicable to full-size and non-full-size cribs and pacifiers effective for products *manufactured after* January 20, 2009;
- Requirements concerning small parts effective for products *manufactured after* February 15, 2009; and
- Requirements on the lead content of metal components of children's metal jewelry effective for products *manufactured after* March 23, 2009.

See 74 FR at 6399. The Commission stated in the stay that all certification requirements in its regulations that existed prior to the enactment of the CPSIA would remain in effect regardless of the stay on testing and certification. This meant, for example, that the Commission's pre-CPSIA requirements for the testing and certification of mattresses remained in effect, so a mattress manufacturer would be required to comply with the pre-CPSIA requirements for testing and certifying mattresses.

The Commission explained that the stay of enforcement was necessary due to uncertainty or confusion as to how the testing and certification requirements would apply to various products, the type of testing that would be needed, whether finished products or their components could or should be tested, and whether certain requirements (particularly labeling requirements) were, under section 14 of the CPSA, rules, bans, standards, or regulations for which testing is required. The Commission also noted that, at the time it issued the notice in November 2008, several rulemaking or voluntary standards development activities were underway and would not be resolved by February 10, 2009 (the effective date for several CPSIA provisions). Other factors, such as the need to develop or validate test methods and to educate the business community on the CPSIA, contributed to the Commission's decision to issue its stay of enforcement (*see* 74 FR at 6397 through 6398).

The **Federal Register** notice announcing the stay of enforcement also emphasized that the stay applied only to testing and certification; in other words, a product still had to comply with applicable mandatory safety requirements. For example, the stay of enforcement meant that a manufacturer did not have to have a recognized third party laboratory test a children's toy with respect to the CPSIA's limit for phthalates, but the children's toy still had to comply with the phthalate limit.

II. When Will the Stay of Enforcement Be Lifted? When Will Manufacturers Need To Test and Certify Their Products?

A. What Prompted the Commission Action on the Stay of Enforcement Prior to the February 10, 2010 Scheduled Date for a Vote To Terminate the Stay?

Between February 9, 2009 and the date of publication of this notice, the Commission issued more than 20 **Federal Register** notices, statements of policy, guidance documents, proposed rules, interim final rules, and final rules pertaining to the CPSIA, and most of these documents pertained to testing and certification issues. These **Federal Register** documents include:

- ''Third Party Testing for Certain Children's Products; Notice of Requirements for the Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with the Limits on Total Lead in Children's Products,'' 74 FR 55820 (October 29, 2009);
- ''Notice of Availability of a Statement of Policy: Testing and Certification of Lead Content in Children's Products,'' 74 FR 55820 (October 29, 2009);
- Proposed Rule on ''Safety Standard for Infant Walkers,'' 74 FR 45704 (September 3, 2009);
- Proposed Rule on ''Safety Standard for Bath Seats,'' 74 FR 45719 (September 3, 2009);
- ''Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with Parts 1203,

1510, 1512, and/or 1513 and Section 1500.86(a)(7) and/or (a)(8) of Title 16, Code of Federal Regulations,'' 74 FR 45428 (September 2, 2009);

- Final Rule on ''Children's Products Containing Lead; Determinations Regarding Lead Content Limits on Certain Materials or Products,'' 74 FR 43031 (Aug. 26, 2009);
- ''Notice of Availability of a Statement of Policy: Testing of Component Parts With Respect to Section 108 of the Consumer Product Safety Improvement Act,'' 74 FR 41400 (August 17, 2009);
- Final Rule on ''Children's Products Containing Lead; Interpretative Rule on Inaccessible Component Parts,'' 74 FR 39535 (August 7, 2009);
- Proposed Rule on Requirements for Consumer Registration of Durable Infant or Toddler Products, 74 FR 30983 (June 29, 2009);
- Final Rule on ''Children's Products Containing Lead; Final Rule; Procedures and Requirements for a Commission Determination of Exclusion,'' 74 FR 10475 (Mar. 11, 2009);
- Notice of Availability of Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA Section 108; Request for Comments and Information, 74 FR 8058 (Feb. 23, 2009); and
- Interim Final Rule on ''Children's Products Containing Lead; Exemptions for Certain Electronic Devices; Interim Final Rule,'' 74 FR 6990 (Feb. 12, 2009).

Additionally, the Commission has met with numerous parties to discuss various aspects of the CPSIA or educate interested parties about the CPSIA's requirements, and, on December 10, and 11, 2009, it held a two-day workshop to discuss issues relating to the testing, certification, and labeling of certain consumer products pursuant to section 14 of the CPSA (see 74 FR 58611 (November 13, 2009)). Given the issuance of many rules and other **Federal Register** documents, statements of policy, and guidance documents, the Commission believes it is appropriate to phase in the testing and certification requirements as described in more detail below.

Parts II.B through F of this document discuss specific consumer product safety rules under the CPSA and similar rules, bans, standards, or regulations under the other laws enforced by the Commission as to which consumer products or children's products must be certified, and how the Commission will handle each with regard to the timing of certification requirements. For example, for a children's product, lifting the stay of enforcement with regard to a particular children's product safety rule will mean that the children's product is subject to the third party testing requirement and the manufacturer's certification must be based on the results of tests conducted by a CPSC recognized third party laboratory. The Commission recognizes that many retailers have been requiring third-party testing and certification despite its stay of enforcement. In certain circumstances, however, with regard to specific children's product safety rules, laboratories still need to be accredited for testing. Further, the Commission still needs to address the issues of component part testing and the scope of the definition of the term ''children's product.'' The sections below describe how the Commission will handle those particular situations. For a non-children's product, lifting the stay of enforcement will mean that the product is subject to the certificate requirements in section 14(g) of the CPSA. If the product was subject to a pre-existing certificate requirement (which may be in the form of a label), there may be a need for a manufacturer to modify its certificates to include the new requirements in section 14(g) of the CPSA where appropriate, or provide the additional information required by section 14(g) in some other manner where the existing label cannot be altered, which is currently the case with the mattress standard. Finally, this document, in sections C, E and F below, indicates the rules where certificates of compliance will be required for non-children's products and how manufacturers can transition their existing certifications under prior Commission regulations to meet the new requirements of section 14(g) of the CPSA.

B. Children's Products Where the Commission Is Lifting the Stay of Enforcement and For Which Third Party Testing and Certification Will Become Necessary

As indicated above in part I.A, the Commission has issued two notices of requirements for accreditation of laboratories for testing to children's product safety rules that were affected by the stay of enforcement. (*See* 74 FR 45428 (September 2, 2009) (pertaining to bicycle helmets subject to 16 CFR part 1203, dive sticks and similar articles subject to 16 CFR 1500.86(a)(7) and (a)(8), rattles subject to 16 CFR part 1510, bicycles subject to 16 CFR part 1512, and bunk beds subject to 16 CFR part 1513)); 74 FR 55820 (October 29, 2009) (pertaining to limits on total lead in children's products).) Through this notice, the Commission announces its decision with regard to four of these children's product safety rules to lift the stay of enforcement on February 10, 2010 as follows:

- Bicycle helmets (16 CFR part 1203);
- Bunk beds (16 CFR part 1513);
- Rattles (16 CFR parts 1510, 1500.18(a)(15) and 1500.86(a)(1)); and
- Dive sticks (16 CFR parts 1500.18(a)(9) and 1500.86(a)(7) and (a)(8)).

Children's products subject to the four regulations identified immediately above will require testing by a recognized third party laboratory and certification based on such testing.

With regard to bicycle helmets, the existing certification and labeling requirement of 16 CFR part 1203.34 states that the label ''is the helmet's certificate of compliance.'' The certification label requirement in the bike helmet standard requires fewer details than what is now required for certifications under section 14(g) of the CPSA. The current label on bicycle helmets does not contain the contact information for the date and place where tested, custodian of test records and the place of manufacture which section 14(g) requires as part of any certification. Likewise, with regard to youth helmets, the existing label would not identify the third party testing laboratory which would now be required under section 14(g) of the CPSA. The more detailed requirements of section 14(g) can be handled in one of two ways: (1) The bicycle helmet manufacturer can either include this additional information on the label on its products such that the label continues to serve as the helmet's certificate of compliance; or (2) the manufacturer or importer can provide a separate paper or electronic certificate to accompany the helmets.

The Commission plans to keep the stay in effect for the bicycle regulations (16 CFR part 1512) as applicable to all bicycles, both non children's and children's, until May 17, 2010. With regard to bicycles, the Commission has determined that there is insufficient laboratory capacity for third-party testing of bicycles at this time despite the fact that the notice of accreditation of laboratories issued more than 90 days ago. The Commission understands that the laboratories are communicating with staff about their applications, capabilities and related timing issues. Should the extension of this stay until May 17, 2010 prove insufficient, the bicycle manufacturers and laboratories must petition the Commission for additional relief no later than April 1, 2010.

The Commission plans to keep the stay in effect for total lead content in metal children's products and in non-metal children's products tested pursuant to CPSC–CH–E1001–08, Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products or CPSC–CH–E1002–08, Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products, (section 101 of the CPSIA) until February 10, 2011. With regard to lead content, the Commission has determined that testing of children's products for lead content by a recognized third party testing laboratory and certification based upon that testing should begin on products manufactured after February 10, 2011 to allow component testing to form the basis for certifications for lead content and permit the staff to complete an interpretative rule on the meaning of the term ''children's product.'' An interpretative rule on the meaning of the term ''children's product'' would provide firms with additional guidance on when testing for lead content will be required by the Commission. In the meantime, to assist subject firms in understanding the meaning of ''children's product'' as used in the CPSIA pending the issuance of a final rule on it, the Commission has posted on its Web site a series of Frequently Asked Questions that explain that the Commission believes that certain products are presumptively children's products, such as stuffed animals, hula hoops, outdoor playground equipment, children's art materials, children's backpacks and lunchboxes, strollers, playpens and other juvenile products. Other products come sized for both adults and children, including, but not limited to, ATVs, bicycles, mattresses, and wearing apparel, and the Commission has already indicated that the youth-sized versions of those products would be considered children's products. Further, by way of illustration and guidance pending the issuance of the interpretative rule on the meaning of ''children's product'' in the CPSIA, the Commission offers the following additional examples that demonstrate the application of the definition of ''children's product:''

(1) A mat for use on the floor in the back seat of a car is decorated with animated characters. This product is not a children's product despite its cartoon motif. A car mat is not commonly recognized by consumers as being intended for a child 12 years of age or younger. While a child may sit in the back seat and the products may be advertised showing a child sitting on a seat with the mat under his or her feet, the product is not primarily designed or intended for the child. It does not need to be tested for lead content and does not require third-party testing.

(2) A local home improvement store sells shredded hardwood mulch in 2 cubic feet bags in its garden center. It advertises the mulch solely for use in gardening. The manufacturer of the mulch has only indicated on its packaging that it is intended as a weed barrier that also prevents water loss around plants. A local elementary school purchases a delivery of 100 bags of shredded hardwood mulch to provide soft surfacing for its outdoor playground equipment. The shredded hardwood mulch is not a children's product even though purchased for use by the school. It has not been marketed for use by children and is not commonly recognized by consumers as being intended for use by children. It does not need to be tested for lead content and does not require a tracking label.

C. Products Where the Commission Is Lifting the Stay of Enforcement and for Which General Conformity Certification Will Become Necessary

The Commission further announces its decision to lift the stay of enforcement on February 10, 2010 with regard to the following rules applicable to non-children's products:

- Ban on Lead-In-Paint in paint and on furniture (16 CFR part 1303);
- Requirements for child-resistance on portable gas containers (Section 2 of the Children's Gasoline Burn Prevention Act);
- Regulations for special packaging required under the Poison Prevention Packaging Act (16 CFR part 1700);
- Ban on extremely flammable contact adhesives (16 CFR part 1302);
- Ban of unstable refuse bins (16 CFR part 1301); and
- Standard for refrigerator door latches (16 CFR part 1750).

Products subject to these statutes and regulations will require testing based upon a reasonable testing program, and the manufacturers will need to issue a certificate of general conformity to these statutes or regulations (''general conformity certificate'') beginning on February 10, 2010 for all products manufactured after that date. The Commission has concluded that general conformity certificates are not required for labeling requirements under the Federal Hazardous Substances Act because those requirements are not sufficiently similar to consumer product safety standards or bans to warrant certification.

D. Consumer Products or Children's Products Where the Commission Is Continuing the Stay of Enforcement Until Further Notice

Due to factors such as pending rulemaking proceedings affecting the product or the absence of a notice of requirements for the children's product, the Commission has decided to continue the stay of enforcement for consumer products or children's products listed below. This means that the Commission will not take enforcement action against the manufacturers (including importers) and private labelers of such products for not having certificates based on third party testing as required by the CPSIA. Products must still comply with these regulations including any testing requirements contained in those regulations. (For convenience, we have identified the relevant regulation or statutory provision applicable to the product.)

- Carpets and rugs (16 CFR parts 1630 and 1631, except that the continuation of the stay of enforcement does not extend to guarantees under the Flammable Fabrics Act);
- Vinyl plastic film (16 CFR part 1611, except that the continuation of the stay of enforcement does not extend to guarantees under the Flammable Fabrics Act);
- Wearing apparel (16 CFR part 1610, except that the continuation of the stay of enforcement does not extend to guarantees under the Flammable Fabrics Act);
- Caps and toy guns (16 CFR part 1500.18(a)(5));
- Phthalates (section 108 of the CPSIA);
- ASTM F963 (Consumer Safety Specifications for Toy Safety) (section 106 of the CPSIA);
- Clacker balls (16 CFR parts 1500.18(a)(7), 1500.86(a)(5));
- Baby walkers (In the **Federal Register** of September 3, 2009 (74 FR 45704), the Commission issued a proposed rule pertaining to baby walker standards);
- Bath seats (In the **Federal Register** of September 3, 2009 (74 FR 45719), the Commission issued a proposed rule pertaining to bath seats);
- Children's sleepwear (16 CFR parts 1615 and 1616, except that the continuation of the stay of enforcement does not extend to guarantees under the Flammable Fabrics Act);
- Electronic toys (16 CFR parts 1500.18(b) and 1505); and
- Durable infant products (section 104 of the CPSIA).

The Commission intends to require testing and certification of these

products once it completes the rulemakings associated with the products, issues notices of requirements, or otherwise resolves the issues that have warranted a continuation of the stay of enforcement for the products.

E. Consumer Products Subject to Pre-Existing Requirements, but That May Be Subject to Additional Requirements for Children's Products When the Commission Issues a Notice of Requirements for the Children's Product or That May Be Subject to Additional Certification Requirements

In some cases, a product class can consist of products that are intended for adults and products that are intended for children depending on how the product is marketed. In these situations, the general conformity certification requirements in section 14(a)(1) of the CPSA would apply to the non-children's product, whereas the third party testing and certification requirements in section 14(a)(2) of the CPSA would apply to the children's product.

As stated above in part I.B, the Commission's stay of enforcement did not apply to the requirements of any CPSC regulation requiring testing, labeling, recordkeeping or certification as it existed before the CPSIA. The Commission made clear at the time it issued the stay in February of 2009, that its stay did not undo these pre-existing testing, labeling, recordkeeping or certification requirements, some of which had been in place for certain products for many years. The Commission never stayed the certifications required for ATVs manufactured after April 13, 2009, nor did it stay the certification requirements in the mattress standard which existed prior to the passage of the CPSIA. Indeed, there are two mandatory certification requirements relating to ATVs that were not stayed: (1) The requirement in the mandatory standard for ATVs which requires a certification label that contains a certification by the manufacturer; and (2) the certification required by CPSA section 42, added by the CPSIA, which contains a certification requirement that relates to the ATV Action Plans. A third certification, the general conformity certificate for ATVs containing all of the information required by section 14(g) of the CPSA, will now be required for ATVs effective February 10, 2010. As discussed above with regard to bike helmets, the more detailed requirements of section 14(g) can be handled in one of two ways: (1) The ATV manufacturer can either include this additional information on the label on its ATVs such that the label continues to serve as the ATV's certificate of compliance; or (2) the manufacturer or importer can provide a separate paper or electronic certificate to accompany the ATVs.

The Commission's decision to lift the stay of enforcement will require that manufacturers (including importers) and private labelers of youth sized ATVs and mattresses primarily intended for children 12 and younger will need to modify their certificates to include all of the information required by section 14(g) of the CPSA. The details of the information described in section 14(g) of the CPSA requirements are available in a prior **Federal Register** notice on our Web site at *http://www.cpsc.gov/businfo/frnotices/fr09/certification.pdf.* Certificates must identify the manufacturer or private labeler issuing the certificate and any CPSC recognized third party laboratory on whose testing the certificate depends. Section 14(g) of the CPSA also requires the certificate to include, at a minimum, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of the test results. Section 14(g) of the CPSA further requires the certificate to be legible and in English and contains other requirements pertaining to certificate availability and electronic filing.

The Commission's decision to lift the stay of enforcement means that youth ATVs and mattresses intended or designed primarily for children 12 and younger are subject to the third party testing and certification requirements in section 14(a)(2) of the CPSA. Certificates for youth-sized ATVs and mattresses primarily intended for use in cribs or exclusively in children's sized beds will need to be based upon testing done by a CPSC recognized third party laboratory. The Commission has not yet issued a notice of accreditation requirements for mattresses or ATVs so no third-party certificates will be required until 90 days after the Commission issues such notices of requirements. Furthermore, nothing in this notice affects the pre-existing stay on lead content testing and certification for youth ATVs. Youth ATVs and bicycles do not need to be tested for compliance with the lead limit of 300 ppm because the Commission has stayed those requirements by the issuance of a separate stay which remains in full force and effect for all the covered products.

Adult ATVs and mattresses are not children's products, but those consumer products will require testing, either of each product or based upon a reasonable testing program, and the issuance of a general conformity certificate under section 14(a)(1) of the CPSA. Regardless of whether the product is or is not a children's product, the certificates for such product must comply with section 14(g) of the CPSA. The Commission understands that labels under the existing mattress standard and that serve as the certificate of compliance for those mattresses cannot be altered or modified without the Commission revising its regulation to allow for the additional information required by section 14(g) to be contained on the mattress label. The Commission directs staff to examine the labeling requirements of the mattress rule to determine whether staff should recommend a revision to the rule to conform to the requirements of section 14(g). Until the Commission acts to address this issue, mattress manufacturers must provide general conformity certificates for their products that contain all of the required information in section 14(g).

F. Consumer Products Subject to a Pre-Existing Testing, Labeling, Recordkeeping or Certificate Requirement and That Now Are Subject to Additional Certification Requirements

As stated above in part I.B, the Commission's stay of enforcement did not apply to the requirements of any CPSC regulation requiring testing, labeling, recordkeeping or certification as it existed before the CPSIA. The Commission made clear at the time it issued the stay in February of 2009, that its stay did not undo these pre-existing testing, labeling, recordkeeping or certification requirements which had been in place for certain products for many years. Several consumer products fall into this category, but, as stated immediately above in part II.E of this document, the Commission's decision to lift the stay of enforcement means that manufacturers (including importers) and private labelers of these products may need to modify their certificates to include any additional information required by section 14(g) of the CPSA. (For convenience, we have identified the relevant regulation applicable to the product.)

- Architectural glazing (16 CFR part 1201);
- Matchbooks (16 CFR part 1202);
- CB antennas (16 CFR part 1204);
- Lawnmowers (16 CFR part 1205);
- Swimming pool slides (16 CFR part 1207);

- Candles with lead wicks (16 CFR 1500.12(a)(2) and 1500.17(a)(13(i)–(ii));
- Cellulose insulation (16 CFR part 1209);
- Garage door openers (16 CFR part 1211);
- Cigarette lighters (16 CFR part 1210);
- Multi-purpose lighters (16 CFR part 1212); and
- Fireworks (16 CFR 1500.14(b)(7), 1500.17(a)(3), 1500.17(a)(8–9), 1500.17(a)(11–12), 1500.83(a)27, 1500.85(a)(2) and part 1507).

III. The Stay

The United States Consumer Product Safety Commission hereby lifts the stay of enforcement that was announced in the **Federal Register** on February 9, 2009 as being effective until February 10, 2010. There will be no vote to lift the stay on February 10, 2010 as previously described in the **Federal Register** because the Commission has agreed that its issuance of this notice supersedes the earlier requirement for a vote on February 10, 2010.

Thus, as of February 11, 2010, except as stated above in part II, manufacturers (including importers) and private labelers of consumer products and children's products must comply with the testing and certification requirements set forth in paragraphs 14(a)(1), (a)(2), (a)(3), and (g) of the CPSA, as amended by section 102(a) of CPSIA. Products subject to CPSA or FHSA bans which are not expressly addressed by the Commission in this document do not require certification at this time. To the extent that any consumer product or children's product remains subject to a stay of enforcement as described above in part II, the Commission reiterates that such stay of enforcement does not alter or otherwise affect the requirement that the products meet all applicable product safety rules as defined in the CPSA or similar rules, bans, standards, or regulations under any other Act enforced by the Commission.

Dated: December 18, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–30663 Filed 12–24–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2009 Lead Limits

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') is announcing an interim enforcement policy regarding component testing and certification of children's products and other consumer products to the 90 parts per million (ppm) lead in paint limit and to the 300 ppm lead limit for children's products established in section 101 of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'').

DATES: The interim enforcement policy is effective on December 16, 2009.

FOR FURTHER INFORMATION CONTACT: John ''Gib'' Mullan, Assistant Executive Director for Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; e-mail *jmullan@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

This statement sets forth the Commission's interim enforcement policy with regard to testing and certification of consumer products to the lead paint and lead content limits that took effect on August 14, 2009.[1] It states the circumstances under which domestic manufacturers or importers may certify children's products as in compliance with lead limits based on testing, at different times, of components or paints used on those products. As explained more fully below in part V of this document, a domestic manufacturer or importer may certify compliance with lead limits if, for each accessible component and each type of paint used on a product, it either obtains passing test results from a recognized third-party test laboratory or holds a certificate from another person based on passing test results from a recognized third-party test laboratory.

To make it easier for interested parties to understand the interim enforcement policy's provisions and how certain provisions interact with others, we have numbered each paragraph in the interim enforcement policy.

II. Lower Limits for Lead in Paint and in Children's Products

1. On August 14, 2009, the limit for lead in paint and similar surface coatings was reduced from 600 parts per million (ppm) to 90 ppm. Section 101(f)(1) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law No. 110–314 (Aug. 14, 2008) required the Commission to modify its pre-existing regulation banning lead in paint by decreasing the applicable limit to 90 ppm (*see* 73 FR 77492 (Dec. 19, 2008)).

To simplify discussion, we use the term ''paint'' broadly herein to include any type of surface coating that is subject to 16 CFR part 1303. The new lower limit applies not only to paint sold to consumers as such (for example, a gallon of paint sold at a hardware store), but also to any paint on toys or other articles for children and to any paint on certain household furniture items (not limited to children's furniture). *See* 16 CFR part 1303.

2. Also on August 14, 2009, the general limit for lead in any accessible part of a children's product was reduced from 600 ppm to 300 ppm (see section 101(a)(2)(B) of the CPSIA). In this context, the term ''children's product'' means any consumer product that is designed or intended primarily for children 12 years of age or younger (*see* 15 U.S.C. 2052(a)(2)). Congress set out four factors that must be considered in determining whether a consumer product is primarily intended for children 12 and under; a statement of the manufacturer's intent concerning the appropriate age for users of the product is not determinative, but must be considered as one factor if it is reasonable. The Commission has promulgated a final rule for determining when parts of a children's product may be deemed inaccessible (*see* 74 FR 39535 (August 7, 2009)).

3. The Commission has established higher lead content limits for certain electronics components of children's products and has exempted certain other electronics components, such as cathode ray tubes, altogether (*see* 74 FR 6990 (February 12, 2009)). The Commission has denied exemptions in all other cases that have come before it to date, but it has temporarily stayed enforcement of the applicable lead content limits for certain metal components of youth motorized vehicles and youth bicycles (*see* 74 FR 22154 (May 12, 2009) (stay of enforcement pertaining to youth motorized recreational vehicles)); 74 FR

[1] The Commission voted 5–0 to publish this notice in the **Federal Register**. Commissioner Anne Northup issued a statement, and the statement can be found at *http://www.cpsc.gov/PR/northup12162009comptest.pdf*.

31254 (June 30, 2009) (stay of enforcement pertaining to youth bicycles and related products)).

4. Beginning on August 14, 2009, it became unlawful to sell, offer for sale, manufacture for sale, distribute in commerce or import into the United States any product that is subject to the new lead limits, but fails to comply, regardless of when the product was made. Under section 101(a)(1) of CPSIA, any children's product containing lead above the limit is to be treated as a banned hazardous substance under the Federal Hazardous Substances Act. It is unlawful for any person to sell, offer for sale, import or distribute a banned hazardous substance (*see* 15 U.S.C. 2068(a)(2)(D); see also 15 U.S.C. 1263(a)). Products that do not comply with the applicable lead limits are classified as banned hazardous substances and thus are also subject to export restrictions (*see* 15 U.S.C. 2068(a)(15)(A)).

III. Certification Requirements and Effective Dates

5. Any children's product that bears paint and is manufactured after August 14, 2009 must be certified as in compliance with the 90 ppm lead limit (see 15 U.S.C. 2063(a)(2) and (a)(3)(B)(i)). The certification must be based on testing by a third-party conformity assessment body listed on CPSC's Web site as qualified to test for lead in paint (*see http://www.cpsc.gov/cgi-bin/labapplist.aspx* and use the ''Narrow the Laboratory List'' function to identify conformity assessment bodies that are accredited to a specific scope). For convenience, we use the term ''third-party test lab'' as shorthand for ''third-party conformity assessment body.'' In addition, we refer to a third-party test lab as ''recognized'' when it has been listed on CPSC's Web site as qualified to test products for compliance with a particular standard, ban or regulation.

6. The testing and certification requirements for paint sold as such and for consumer products that are subject to the lead paint limits but are not intended primarily for children age 12 and younger (such as certain household furniture items) were stayed by vote of the Commission on January 30, 2009 (*see* 74 FR 6396 (February 9, 2009)). With respect to these products, the stay of enforcement relating to the lead in paint limit will be lifted as of February 10, 2010. Accordingly, such products, if manufactured after that date, will have to be certified to the 90 ppm limit based on a test of each product or a reasonable testing program (see 15 U.S.C. 2063(a)(1)(A)).

7. Children's metal jewelry that is manufactured after August 14, 2009 must be certified as in compliance with the 300 ppm limit on lead in any accessible metal part. (The stay of enforcement discussed in paragraph 6 does not apply to the certification of metal components of children's metal jewelry.) The Commission has promulgated guidance for determining when a part is inaccessible (*see* 74 FR 39535). Neither paint nor electroplating may be considered as making underlying materials inaccessible (see section 101(b)(3) of the CPSIA). The certification must be based on testing by a third-party test lab listed on CPSC's Web site as qualified to test for lead in children's metal jewelry (see *http://www.cpsc.gov/cgi-bin/labapplist.aspx* and use the ''Narrow the Laboratory List'' function to identify conformity assessment bodies that are accredited to a specific scope). If the children's metal jewelry bears paint, it must also be certified as in compliance with the 90 ppm limit, as discussed in paragraph 5.

8. The Commission has determined that some materials, by their nature, will never exceed the lead content limits. These include many natural materials such as gemstones, wood, cotton and wool, as well as certain refined metals and alloys. For a more complete list of such materials, *see* 74 FR 43031 (August 26, 2009). If all accessible parts of a children's product consist of such materials, then that product need not be tested or certified as in compliance with the lead content limits. The Commission recently issued a ''Statement of Policy on Testing and Certification of Lead Content in Children's Products'' (*see* 74 FR 55820 (Oct. 29, 2009)).

9. Children's products other than those described in paragraphs 7 or 8 must be certified as in compliance with the 300 ppm lead content limit only if they are manufactured after February 10, 2011 and only as to accessible parts that are not subject to the Commission determination described in paragraph 8 above. Pursuant to section 14(a)(2) of the Consumer Product Safety Act (CPSA), the certification must be based on testing by a third-party test lab listed on CPSC's Web site as qualified to test for lead in children's products. The Commission has issued a notice of requirements for recognizing laboratories as qualified to test for lead content in children's products (*see* 74 FR 55820 (October 29, 2009)).

10. By rule, the Commission has specified that products made within the United States must be certified by the domestic manufacturer; products made outside the United States must be certified by the importer (*see* 16 CFR 1110.7). Neither a foreign manufacturer nor a private labeler is currently required to certify compliance, but either may do so voluntarily.

IV. Certification to Lead Paint Limits Based on Testing of Paint Samples Not Obtained From the Final Product

11. In general, certification of children's products must be based on testing of samples of the final product, in the same condition as it would be in when sold to a consumer, or samples that are ''identical in all material respects'' (*see* 15 U.S.C. 2063(a)(2)(A) (manufacturer must provide a test lab with ''sufficient samples of the children's product or samples that are identical in all material respects to the product'')). In the case of lead paint limits, the manufacturer of a children's product can send samples of the final product to a test laboratory so that each type of paint may be scraped off and tested individually. Where small amounts of a particular paint are used, however, a large number of samples of the children's product may be needed to obtain enough of that paint to test.

12. The Commission intends to issue rules addressing when certification may be based on testing of paints before they are applied to a product rather than based on testing of paints after they have been applied to such a product and then scraped off the product. Until issuance of such rules, and subject to paragraph 24, the Commission will permit certification of a children's product as being in compliance with the 90 ppm lead paint limit if, for each paint used on the product, the domestic manufacturer or importer who certifies the product either has obtained a test report as described in paragraph 13 or holds a paint certificate as described paragraph 14. The certificate accompanying the children's product should list each paint used, by color, location or other means, and for each paint, should identify the corresponding test report or paint certificate on which the product certification is based.

13. As part of its basis for certification of a children's product to the 90 ppm lead in paint limit, a domestic manufacturer or importer may rely on a test report showing passing test results for one or more paints used on the product, based on testing either of them has commissioned from a recognized third-party test lab. The manufacturer of the children's product should ensure that each paint sample sent to a third-party test lab is representative of that used on the final product. Test reports should identify each paint tested by color, specification number or other characteristic, as well as the

manufacturer of the paint and the supplier of the paint (if different).

14. As part of its basis for certification of a children's product to the 90 ppm lead in paint limit, a domestic manufacturer or importer may rely on a certificate from another person certifying that paint complies with the 90 ppm lead limit. The paint certificate must be based on testing of a representative sample of one or more paints conducted by a recognized third-party test lab. The paint certificate should identify all test reports underlying the certification, consistent with section 14 of the CPSA, 15 U.S.C. 2063.

15. Any person who certifies a children's product as complying with the 90 ppm lead paint limit should be able to trace each batch of paint that is used on the product to the paint manufacturer. The product manufacturer should ensure that paints meeting the lead limits when tested and certified are not later contaminated with lead from other sources before or during application to the product.

16. To be ''representative'' for purposes of paragraphs 13 and 14, a paint sample need not be of the same quantity as is applied to the children's product nor must it be painted on the same substrate material; rather, it may consist of any quantity of paint that is sufficient for testing purposes, either in liquid form or in the form of dried film of the paint on any substrate. In all other respects, the sample should have the same composition as the paint used on the final product. For example, if the manufacturer of a children's product uses a drying agent that mixes with the paint, then the test sample should reflect that mixture.

17. For consumer products that are not children's products but are subject to lead paint limits (such as certain furniture items), a domestic manufacturer or importer may base its certification to the 90 ppm lead paint limit (when required as explained in paragraph 6 above) on its own testing of each paint used on the product, on testing by any third-party test lab, on paint certification(s) from any person or on a combination of these methods.

V. Certification to Lead Content Limits for Children's Metal Jewelry and Other Children's Products Based on Component Testing

18. The Commission intends to issue rules addressing when children's products may be certified to lead content limits based on testing of components separately from the final product. (The Commission staff has previously stated that it would accept certification of a children's product to lead content limits based on testing of individual components in the case of products, such as building sets, which consist of an ''assortment'' of individual pieces. In such cases, the certificate should identify the test information for each piece.)

Until such rulemaking is completed, subject to paragraph 24, the Commission will permit certification of a children's product as being in compliance with the 300 ppm lead content limit (when required as discussed in paragraphs 7 and 9 above) if, for each accessible component of the product, the domestic manufacturer or importer who certifies the product either has obtained a test report as described in paragraph 19 or holds a component certificate as described in paragraph 20. The certificate accompanying the children's product should list each component required to be tested by part number or other specification and for each such part, should identify the corresponding test report or component certificate on which product certification is based. The determination of which, if any, parts are inaccessible must be based on an evaluation of the final product, not of individual components.

19. As part of its basis for certification of a children's product to the 300 ppm lead content limit, a domestic manufacturer or importer may rely on a test report showing passing test results for one or more components used on the product, based on testing either of them has commissioned from a recognized third-party test lab. For each type of component to be tested, the manufacturer of the children's product should draw a random sample from the batch or lot of such components to be used in making the final product. Test reports should identify each component tested, by part number or other specification, as well as the manufacturer of the component and the supplier (if different).

20. As part of its basis for certification of a children's product to the 300 ppm lead content limit, a domestic manufacturer or importer may rely on a certificate from another person certifying that a component complies with the 300 ppm lead limit. The component certificate must be based on testing of a representative sample of the component(s) by a recognized third-party test lab. The component certificate should identify all test reports underlying the certification consistent with section 14 of the CPSA, 15 U.S.C. 2063.

21. Any person who certifies a children's product as complying with the lead content limits should be able to trace each component of the product to the component's manufacturer.

22. To be ''representative'' of a component for purposes of paragraph 20, a sample need not be of the same size, shape or finish condition as the component of the final product; rather, it may consist of any quantity that is sufficient for testing purposes and in any form that has the same content as the component of the final product. For example, if a manufacturer receives plastic resins or compounds from a supplier in a raw state, such as pellets, that are later molded into a component or a finished children's product in the manufacturing process, the manufacturer may send the third-party test lab samples of the plastic either in the form received or in their finished state. The manufacturer must take care, however, that the manufacturing process does not add lead from an untested source, such as the material hopper, regrind equipment, or other equipment used in the assembly of the finished product.

VI. Composite Testing

23. In testing paints for compliance with lead limits, third-party test labs may test a combination of different paint samples so long as they follow procedures ensuring that no failure to comply with the lead limits will go undetected. For an example of an acceptable methodology, *see* Test Method: CPSC–CH–E1003–09, Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings (April 26, 2009) (available on the Internet at *http://www.cpsc.gov/about/cpsia/CPSC-CH-E1003-09.pdf*). Similarly, third-party test labs may test a combination of plastic components or a combination of metal components so long as they follow procedures ensuring that no failure to comply with the lead limits will go undetected.

VII. Requirement That Reliance Be Reasonable

24. No person may rely on a test report, a paint certificate or a component certificate, nor certify a product based on such a test report or certificate, if such person knows, or in the exercise of due care has reason to know, that the test report or certificate is false or misleading in any material respect.

VIII. Enforcement Policy

25. A domestic manufacturer or importer who certifies a children's product as in compliance with lead limits based on component testing in accordance with this policy statement

shall not be subject to civil or criminal penalties for failure to certify or for false certification on the grounds of having certified to such limits without submitting samples of the final children's product (i.e., the product in its entirety) for testing. A retailer or other seller of a product who holds a certificate based on component testing in accordance with this policy statement may rely upon it to the same extent as if it had been based on testing of the final product. Any person who issues a false or misleading certificate for any paint or component is subject to penalties.

IX. Disclaimer

26. Certification of a product in accordance with all conditions of this policy statement does not exempt any manufacturer (including an importer) from the duty to ensure that each product unit manufactured or imported complies with all applicable lead limits, nor from the duty to report to the Commission immediately should it obtain information which reasonably supports the conclusion that such product fails to comply with applicable lead limits.

X. Delegation

27. The Commission hereby delegates to the Assistant Executive Director, Office of Compliance and Field Operations, authority to implement this policy and to depart from the policy in individual cases if warranted by unusual circumstances. The Assistant Executive Director shall notify the Commission promptly where he deems it advisable to depart from the policy in individual cases.

XI. Effective Dates

28. This interim statement of policy will take effect immediately upon approval by the Commission. It supersedes: (1) The ''Statement of Commission Enforcement Policy on Section 101 Lead Limits'' announced on February 6, 2009 (available on the Internet at *http://www.cpsc.gov/about/cpsia/101lead.pdf*); and (2) the ''Interim Enforcement Policy for Children's Metal Jewelry Containing Lead'' issued February 3, 2005 (available on the Internet at *http://www.cpsc.gov/BUSINFO/pbjewelgd.pdf*). This interim policy shall remain in effect until it is revoked, modified or superseded by Commission vote.

Dated: December 18, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–30669 Filed 12–24–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No.CPSC–2009–0108]

Petition Requesting Component Part Testing for Spray Sampling, Multiple Stamping and Finished Component Part Testing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) has received a petition requesting an amendment of the Commission's regulations at 16 CFR 1303 to authorize test procedures for ''spray sampling,'' ''multiple stamping'' and ''finished component testing'' and adopt an interpretative rule that clarifies that test procedures for ''spray sampling,'' ''multiple stamping,'' and ''finished component testing'' under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.* The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by February 26, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0108, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rocky Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland, 20814; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Intertek Consumer Goods NA and the American Apparel & Footwear Association (petitioners) submitted a petition stating that section 14(a) of the CPSA, as amended by section 102(a) of the Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. 2063(a), requires that samples submitted for testing be ''identical in all material respects to the product.'' Petitioners assert that only completely assembled final products may be used for testing to support required third party testing and certification under the CPSIA, including the lead paint standard. Petitioners state that as a result of the final product testing for lead in paint, many samples must be destroyed—sometimes several hundred—to obtain a sufficient sample size. The petitioners assert that although composite testing of different paints is now allowed under certain conditions, there are numerous situations where there is only one small-area color on a product to test, or where even composite testing of up to three unlike paints, still requires the destruction of many product samples. To address these issues, petitioners request the use of alternative test procedures through amendment under the Commission's regulations at 16 CFR 1303 and through an interpretative rule under section 14(a) of the CPSA. Through spray sampling, multiple stamping, and finished component testing, petitioners assert that only one or a few samples or components would need to be destroyed, thus avoiding the unnecessary destruction of the final products themselves, without any reduction in the validity or reliability of the tests themselves.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833. The petition

is also available on the CPSC Web site at *http://www.cpsc.gov.*

Dated: December 17, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–30486 Filed 12–24–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE AIR FORCE

Notice of Intent To Prepare an Environmental Impact Statement for Beddown of Training F–35A Aircraft

AGENCY: Air Education and Training and Air National Guard, United States Air Force.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and Air Force policy and procedures (32 CFR Part 989), the Air Force is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of establishing training F–35 Joint Strike Fighter (JSF) aircraft at one or more existing Air Force installations within the continental United States.

The proposed basing alternatives are Luke AFB, Arizona; Holloman AFB, New Mexico; Eglin AFB, Florida; Air Terminal Air Guard Station, Idaho; and Tucson International Airport Air Guard, Arizona. Each candidate base is an alternative. The potential environmental impacts for each alternative will be analyzed for no action and in six increments of 24 primary assigned aircraft.

The Air Force version of the F–35 JSF, designated F–35A, is a conventional take-off, multiple-role fighter with an emphasis on air-to-ground missions. The aircraft was designed to supplement and eventually replace legacy aircraft as well as complement the air-to-air mission of the F–22A Raptor. At any of the alternative locations, the beddown action would involve personnel changes, facility construction and modifications, and aircraft training operations.

Scoping: In order to effectively define the full range of issues to be evaluated in the EIS, the Air Force will determine the scope of the EIS (*i.e.,* what will be covered and in what detail) by soliciting scoping comments from interested state and federal agencies and interested members of the public through the **Federal Register** and various media in the local areas of concern. Scoping comments should be submitted to the address below by the date indicated. The Air Force will also hold a series of scoping meetings to further solicit input regarding the scope of the proposed action and alternatives.

DATES: Scoping meetings will be held in the potentially impacted communities. The scheduled dates, times, locations and addresses for the meetings will be published in local media a minimum of 15 days prior to the scoping meetings. The Air Force intends to hold scoping meetings in the following communities: January 25–29, 2010 Carrizozo, Alamogordo, Truth or Consequences, Socorro, and Fort Sumner, New Mexico; February 8–12, 2010 Marsing, Boise, Meridian, and Bruneau Idaho; February 22–26, 2010 El Mirage, Sun City, Gila Bend, Wickenburg, and Litchfield Park, Arizona; March 1–5, 2010 Tucson, San Carlos, Safford, Bisbee, Arizona.

Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by March 25, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David Martin, HQ AETC/A7PP, 266 F Street West, Randolph AFB, TX 78150–4319, telephone 210–652–1962.

Bao-Anh Trinh, YA–3, DAF,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–30664 Filed 12–24–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) will meet for the regular spring meeting. All sessions of the meeting will remain open to the public.

DATES: The meeting will be held on Monday, March 15, 2010, from 8:30 a.m. to 5:30 p.m. and Tuesday, March 16, 2010, from 8:30 a.m. to 2:45 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at the Consortium for Ocean Leadership, 1201 New York Avenue, NW., 4th floor, Washington, DC, 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4118.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research to applications, ocean observing, professional certification programs, and other current issues in the ocean science and resource management communities.

Dated: December 16, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–30681 Filed 12–24–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 26, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory

Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 22, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Programme For The International Assessment Of Adult Competencies (PIAAC) 2010 Field Test And 2011/2012 Main Study Data Collection.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 1,500.

Burden Hours: 3,000.

Abstract: NCES seeks OMB approval to survey adults (16–65 years old) for the field-test administration of the Program for the International Assessment of Adult Competencies (PIAAC) in 2011. PIAAC is coordinated by the Organization for Economic Cooperation and Development (*http://www.oecd.org/*) and sponsored by the U.S. Departments of Education and Labor. PIAAC is the OECD's new international household study of adults' literacy, numeracy, and problem-solving in technology-rich environments. It will also survey respondents about their education and employment experience and about the skills they use at work. PIAAC builds on previous international literacy assessments: The 2002 Adult Literacy and Lifeskills Survey (ALLS) and the 1994–98 International Adult Literacy Survey (IALS). PIAAC is expected to be on a 10-year cycle. In 2011, 28 countries, including 23 OECD-member countries, plan to participate. The U.S. PIAAC field test data collection will occur between August and November 2010. The main study will occur between September 2011 and March 2012. NCES will seek approval for the full-scale instruments in the fall of 2010.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4194. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–30661 Filed 12–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Department of Energy.

ACTION: Notice of the acceptance of Title X claims during fiscal year (FY) 2010.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of claims in FY 2010 from eligible active uranium and thorium processing site licensees for reimbursement under Title X of the Energy Policy Act of 1992. In FY 2009, Congress appropriated $70 million for Title X in the American Recovery and Reinvestment Act of 2009 (Recovery Act). In addition, Congress provided $10 million for Title X through the normal appropriation process. As of the end of FY 2009, there are approximately $36.6 million of Recovery Act funds available for reimbursement in FY 2010, as well as the $10 million provided by the FY 2009 appropriation. Approximately $14 million of the Recovery Act funds will be reimbursed to licensees in early calendar year 2010 following the review of claims received by May 1, 2009. In order to ensure DOE fully utilizes the Recovery Act funds provided for the Title X Program, licensees will be eligible to submit two separate claims in FY 2010. The first claim will be the final FY 2010 annual claim for costs of remedial action performed primarily during the previous calendar year. The second claim will address a portion of the remedial action costs incurred during calendar year 2010, effectively an early FY 2011 claim. The early submission of these claims will enable DOE to meet the specific requirements of the Recovery Act and obligate funding prior to the statutory deadline of September 30, 2010. As of this date it appears there will be no increase in FY 2010 to the uranium dry short ton ceiling, to the individual uranium licensee reimbursement ceilings, to the total amount authorized for reimbursement to the uranium licenses, or to the total amount authorized for reimbursement to the thorium licensee because the change in the average monthly Consumer Price Index for Urban Consumers from 2008 to 2009 is expected to be less than or equal to one. As a result, uranium licensees whose costs exceed the uranium dry short ton ceiling will not be eligible for reimbursement in FY 2010.

DATES: In order to utilize the Recovery Act funds most effectively, the Department will accept two claims from each licensee in FY 2010.

1. The first claim will be the final FY 2010 claim for any costs of remedial action performed prior to that claim submission date but not previously claimed. The closing date for submission of the final FY 2010 claims will be April 30, 2010. It is the intent of the Department to complete the review of the final FY 2010 claims and reimburse eligible claim amounts in January or February of 2011, but no later than April 29, 2011.

2. The second claim will be the partial FY 2011 claim for costs of remedial action performed subsequent to work claimed in the final FY 2010 claim but prior to the submission date. The closing date for submission of the partial FY 2011 claims will be August 24, 2010. The partial FY 2011 claims will be reviewed along with the final FY 2011 claims: The closing date for submission of final FY 2011 claims will be on or about April 29, 2011. The

official date for submission of those claims will be published in the **Federal Register** about one year from now. Payment of the final FY 2011 claims will be made no later than the end of April 2012.

If the total of approved claim amounts exceeds the available funding, the approved claim amounts will be reimbursed on a prorated basis. All reimbursements are subject to the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to Mr. David Alan Hicks, Title X Program Manager, U.S. Department of Energy/EMCBC, @ Denver Federal Center, P.O. Box 25547, Denver, Colorado 80225–0547. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Contact David Mathes at (301) 903–7222 of the U.S. Department of Energy, Office of Environmental Management, Office of Disposal Operations.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR Part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (e.g., statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington, DC on this 15th day of December 2009.

David E. Mathes,

Office of Disposal Operations, Office of Technical and Regulatory Support.

[FR Doc. E9–30624 Filed 12–24–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Extension of Public Comment Period for the Draft Site-Wide Environmental Impact Statement for the Y–12 National Security Complex.

AGENCY: National Nuclear Security Administration, U.S. Department of Energy.

ACTION: Extension of Public Comment Period for the Draft Site-Wide Environmental Impact Statement for the Y–12 National Security Complex.

SUMMARY: On October 30, 2009, NNSA published a Notice of Availability and Public Hearings (74 FR 56189) for the *Draft Site-Wide Environmental Impact Statement for the Y–12 National Security Complex* (Draft Y–12 SWEIS, DOE/EIS–0387). That notice invited public comment on the Draft Y–12 SWEIS through January 4, 2010, and provided the schedule for 2 public hearings to receive comments on the Draft Y–12 SWEIS. NNSA has extended the public comment period through January 29, 2010.

DATES: The public comment period for the Draft Y–12 SWEIS is extended from January 4, 2010 to January 29, 2010. Comments received after that date will be considered to the extent practicable as the NNSA prepares the Final Y–12 SWEIS.

FOR FURTHER INFORMATION CONTACT: Written comments on the Draft Y–12 SWEIS, as well as requests for additional information and requests for copies of the Draft Y–12 SWEIS, should be directed to Ms. Pam Gorman, Y–12 SWEIS Document Manager, Y–12 Site Office, 800 Oak Ridge Turnpike, Suite A–500, Oak Ridge, TN 37830, or by *telephone:* 865–576–9903. Comments may also be submitted by facsimile to 865–483–2014, or by electronic mail to *y12sweis.comments@tetratech.com*. Please mark correspondence ''Draft Y–12 SWEIS Comments.'' Additional information on the Y–12 SWEIS may be found at *http://www.y12sweis.com*.

For general information regarding the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756. Additional information regarding DOE NEPA activities and access to many of DOE's NEPA documents are available on the Internet through the DOE NEPA Web site at *http://www.gc.energy.gov/NEPA*.

SUPPLEMENTARY INFORMATION: On October 30, 2009, NNSA issued a Notice of Availability and Public Hearings (74 FR 56189) for the *Draft Site-Wide Environmental Impact Statement for the Y–12 National Security Complex* (Draft Y–12 SWEIS, DOE/EIS–0387). As originally announced in the NOA, DOE has conducted public hearings on the Draft Y–12 SWEIS in Oak Ridge, Tennessee on November 17–18, 2009. The original public comment period was to continue until January 4, 2010.

However, in response to public comments, DOE is extending the public scoping period until January 29, 2010. Comments received after that date will be considered to the extent practicable as the NNSA prepares the Final Y–12 SWEIS.

Issued in Washington, DC, on December 18, 2009.

Randal S. Scott,

Deputy Associate Administrator for Infrastructure and Environment, National Nuclear Security Administration.

[FR Doc. E9–30628 Filed 12–24–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0517; FRL–9095–5]

RIN 2040–AF06

Notice of Availability of Preliminary 2010 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Clean Water Act (CWA) sections 301(d), 304(b), 304(g), 304(m), and 307(b) require EPA to annually review its effluent guidelines and

pretreatment standards. This notice presents EPA's 2009 review of existing effluent guidelines and pretreatment standards. This notice also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). Finally, this notice presents the Preliminary 2010 Effluent Guidelines Program Plan (''preliminary 2010 Plan''), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. EPA is soliciting comment on its preliminary 2010 Plan and on its 2009 annual review of existing effluent guidelines and pretreatment standards and industrial categories not currently regulated by effluent guidelines and pretreatment standards.

DATES: If you wish to comment on any portion of this notice, EPA must receive your comments by February 26, 2010.

ADDRESSES: Submit your comments, data and information for the 2009 annual review of existing effluent guidelines and pretreatment standards and the preliminary 2010 Plan, identified by Docket ID No. EPA–HQ–OW–2008–0517, by one of the following methods:

(1) *http://www.regulations.gov.* Follow the online instructions for submitting comments.

(2) *E-mail: OW-Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2008–0517.

(3) *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2008–0517. Please include a total of 3 copies.

(4) *Hand Delivery:* Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2008–0517. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2008–0517. 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 regulations.gov or e-mail. The Federal 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 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 you send an e-mail comment directly to EPA without going through 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 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 index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. 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.

The following key document provides additional information about EPA's annual reviews and the Preliminary 2010 Effluent Guidelines Program Plan:

- Technical Support Document for the Preliminary 2010 Effluent Guidelines Program Plan, EPA–821–R–09–006, DCN 06703, October 2009.
- Technical Support Document for the Annual Review of Existing Effluent Guidelines and Identification of Potential New Point Source Categories, EPA–821–R–09–007, DCN 06557, October 2009.
- Steam Electric Power Generating Point Source Category: Final Detailed Study Report, EPA–821–R–09–008, DCN 06390, October 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Carey A. Johnston at (202) 566–1014 or *johnston.carey@epa.gov.*

SUPPLEMENTARY INFORMATION:

How is This Document Organized?

The outline of this notice follows.

I. General Information
II. Legal Authority
III. What Is the Purpose of This **Federal Register** Notice?
IV. Background
V. EPA's 2009 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), and 307(b)
VI. EPA's 2010 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), and 307(b)
VII. EPA's Evaluation of Categories of Indirect Dischargers without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards
VIII. The Preliminary 2010 Effluent Guidelines Program Plan Under Section 304(m)
IX. Request for Comment and Information

I. General Information

A. Does This Action Apply to Me?

This notice provides a statement of the Agency's effluent guidelines review and planning processes and priorities at this time, and does not contain any regulatory requirements.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting Confidential Business Information

Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI 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.

• Explain your views as clearly as possible.

• Make sure to submit your comments by the comment period deadline identified.

II. Legal Authority

This notice is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.,* and in particular sections 301(d), 304(b), 304(g), 304(m), 306, and 307(b), 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, and 1317.

III. What Is the Purpose of This Federal Register Notice?

This notice presents EPA's 2009 review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 304(g), 304(m), and 307(b). This notice also provides EPA's preliminary thoughts concerning its 2010 annual reviews under CWA sections 301(d), 304(b), 304(g) and 307(b) and solicits comments, data and information to assist EPA in performing these reviews. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). This notice also presents the preliminary 2010 Effluent Guidelines Program Plan (''preliminary 2010 Plan''), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment.

IV. Background

A. What Are Effluent Guidelines and Pretreatment Standards?

The CWA directs EPA to promulgate effluent limitations guidelines and standards (''effluent guidelines'') that reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using technologies that represent the appropriate level of control. *See* CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the effluent limitations guidelines and standards promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. *See* CWA sections 301(a), 301(b), and 402. For sources that discharge to POTWs (indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs and State and Federal authorities. *See* CWA sections 307(b) and (c).

1. Best Practicable Control Technology Currently Available (BPT)—CWA Sections 301(b)(1)(A) & 304(b)(1)

EPA defines Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. *See* Appendix A to part 423. All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed, and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. *See* CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—CWA Sections 301(b)(2)(E) & 304(b)(4)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with Best Conventional Pollutant Control Technology (BCT) for discharges from existing industrial point sources. In addition to considering the other factors specified in section 304(b)(4)(B) to establish BCT limitations, EPA also considers a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in 1986. *See* 51 FR 24974 (July 9, 1986).

3. Best Available Technology Economically Achievable (BAT)—CWA Sections 301(b)(2)(A) & 304(b)(2)(B)

For toxic pollutants and non-conventional pollutants, EPA promulgates effluent guidelines based on the Best Available Technology Economically Achievable (BAT). *See* CWA section 301(b)(2)(A), (C), (D) and (F). The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. *See* CWA section 304(b)(2)(B). The technology must also be economically achievable. *See* CWA section 301(b)(2)(A). The Agency retains considerable discretion in assigning the weight accorded to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—CWA Section 306

New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control

technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.,* conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—CWA Section 307(b)

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

6. Pretreatment Standards for New Sources (PSNS)—CWA Section 307(c)

Like PSES, Pretreatment Standards for New Sources (PSNS) are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. What Is EPA's Review and Planning Obligations Under Sections 301(d), 304(b), 304(g), 304(m), and 307(b)?

1. EPA's Review and Planning Obligations Under Sections 301(d), 304(b), and 304(m)—Direct Dischargers

Section 304(b) and 304(m) require EPA to review existing effluent guidelines for direct dischargers each year and to revise such regulations ''if appropriate.'' Section 304(m) supplements the core requirement of section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guidelines selected for possible revision as a result of that annual review. Section 304(m) also requires the plan to identify categories of sources discharging toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. *See* CWA section 304(m)(1)(B); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to ''non-trivial discharges.''). Finally, under section 304(m), the plan must present a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines, providing for final action on such rulemaking not later than three years after the industrial category is identified in a final Plan. *See* CWA section 304(m)(1)(C). EPA also has a duty to promulgate effluent guidelines within three years for new categories identified in the Plan. *See NRDC et al.* v. *EPA,* 437 F.Supp.2d 1137 (C.D. Ca, 2006). EPA is required to publish its preliminary Plan for public comment prior to taking final action on the plan. *See* CWA section 304(m)(2).

In addition, CWA section 301(d) requires EPA to review every five years the effluent limitations required by CWA section 301(b)(2) and to revise them if appropriate pursuant to the procedures specified in that section. Section 301(b)(2), in turn, requires point sources to achieve effluent limitations reflecting the application of the best practicable control technology (all pollutants), best available technology economically achievable (for toxic pollutants and non-conventional pollutants) and the best conventional pollutant control technology (for conventional pollutants), as determined by EPA under sections 304(b)(1), 304(b)(2) and 304(b)(4), respectively. For over three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines, resulting in regulations for 57 industrial categories. *See E.I. du Pont de Nemours & Co.* v. *Train,* 430 U.S. 113 (1977). Consequently, as part of its annual review of effluent limitations guidelines under sections 304(b) and 304(m), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under sections 301(d) and 304(b) simultaneously.

2. EPA's Review and Planning Obligations Under Sections 304(g) and 307(b)—Indirect Dischargers

Section 307(b) requires EPA to revise its pretreatment standards for indirect dischargers ''from time to time, as control technology, processes, operating methods, or other alternatives change.'' *See* CWA section 307(b)(2). Section 304(g) requires EPA to annually review these pretreatment standards and revise them ''if appropriate.'' Although section 307(b) only requires EPA to revise existing pretreatment standards ''from time to time,'' section 304(g) requires an annual review. Therefore, EPA meets its 304(g) and 307(b) requirements by reviewing all industrial categories subject to existing categorical pretreatment standards on an annual basis to identify potential candidates for revision.

Section 307(b)(1) also requires EPA to promulgate pretreatment standards for pollutants not susceptible to treatment by POTWs or that would interfere with the operation of POTWs, although it does not provide a timing requirement for the promulgation of such new pretreatment standards. EPA, in its discretion, periodically evaluates indirect dischargers not subject to categorical pretreatment standards to identify potential candidates for new pretreatment standards. The CWA does not require EPA to publish its review of pretreatment standards or identification of potential new categories, although EPA is exercising its discretion to do so in this notice.

EPA intends to repeat this publication schedule for future pretreatment standards reviews (*e.g.,* EPA will publish the 2010 annual pretreatment standards review in the notice containing the Agency's 2010 annual review of existing effluent guidelines and the final 2010 Plan). EPA intends that these contemporaneous reviews will provide meaningful insight into EPA's effluent guidelines and pretreatment standards program decision-making. Additionally, by providing a single notice for these and future reviews, EPA hopes to provide a consolidated source of information for the Agency's current and future effluent guidelines and pretreatment standards program reviews.

V. EPA's 2009 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), and 307(b)

A. What Process Did EPA Use To Review Existing Effluent Guidelines and Pretreatment Standards under CWA Section 301(d), 304(b), 304(g), 304(m), and 307(b)?

1. Overview

In its 2009 annual review, EPA reviewed all industrial categories

subject to existing effluent limitations guidelines and pretreatment standards, representing a total of 57 point source categories and over 450 subcategories. This review consisted of a screening level review of all existing industrial categories based on the hazard associated with discharges from each category and other factors identified by EPA as appropriate for prioritizing effluent guidelines and pretreatment standards for possible revision. EPA used this review to confirm the identification of the three industrial categories prioritized for further review in the final 2008 Effluent Guidelines Program Plan (September 15, 2008; 73 FR 53218) and to list the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE). Specifically, EPA continued work on three detailed studies as part of the 2009 annual review: Steam Electric Power Generating (Part 423), Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460).[1]

Together, these reviews discharged EPA's obligations to annually review both existing effluent limitations guidelines for direct dischargers under CWA sections 301(d), 304(b), 304(m) and existing pretreatment standards for indirect dischargers under CWA sections 304(g) and 307(b).

Based on this review and prior annual reviews, and in light of the ongoing effluent guidelines rulemakings and detailed studies currently in progress, EPA has decided to pursue an effluent guidelines rulemaking for the Steam Electric Power Generating (Part 423) category.

2. How Did EPA's 2008 Annual Review Influence its 2009 Annual Review of Point Source Categories With Existing Effluent Guidelines and Pretreatment Standards?

In view of the annual nature of its reviews of existing effluent guidelines and pretreatment standards, EPA believes that each annual review can and should influence succeeding annual reviews, *e.g.,* by indicating data gaps, identifying new pollutants or pollution reduction technologies, or otherwise highlighting industrial categories for additional scrutiny in subsequent years. For example, in the current annual review EPA continued its detailed studies of the following three categories: Steam Electric Power Generating (Part 423); Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory); and Hospitals (Part 460) (which is part of the Health Care Industry detailed study). In addition, EPA is expending additional resources to conduct its preliminary category review of the Ore Mining and Dressing (Part 440) category in its 2009 annual review based on the toxic discharges reported to the Toxics Release Inventory (TRI), Permit Compliance System (PCS), and the Integrated Compliance Information System National Pollutant Discharge Elimination System (ICIS–NPDES).

EPA conducts a preliminary category review when it lacks sufficient data to determine whether revision would be appropriate and for which EPA is performing a further assessment of pollutant discharges before starting a detailed study. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA published the findings from its 2008 annual review with its final 2008 Plan, making the data collected available for public comment. Docket No. EPA–HQ–OW–2006–0771. EPA used the findings, data and comments on the 2008 annual review to inform its 2009 annual review. The 2009 review also built on the previous reviews by continuing to use the screening methodology, incorporating some refinements to assigning discharges to categories and updating toxic weighting factors used to estimate potential hazards of toxic pollutant discharges.

3. What Actions Did EPA Take in Performing Its 2009 Annual Reviews of Existing Effluent Guidelines and Pretreatment Standards?

a. Screening-level Review

The first component of EPA's 2009 annual review consisted of a screening-level review of all industrial categories subject to existing effluent guidelines or pretreatment standards. As a starting point EPA collected and analyzed data to identify industrial categories whose pollutant discharges potentially pose the greatest hazard to human health or the environment because of their toxicity (*i.e.,* highest estimates of toxic-weighted pollutant discharges). EPA ranked point source categories according to their discharges of toxic and non-conventional pollutants (reported in units of toxic-weighted pound equivalent or TWPE), based primarily on data from TRI, PCS, and ICIS–NPDES. EPA calculated the TWPE using pollutant-specific toxic weighting factors (TWFs). Where data are available, these TWFs reflect both aquatic life and human health effects. For each facility that reports to TRI or PCS, EPA multiplies the pounds of discharged pollutants by pollutant-specific TWFs. This calculation results in an estimate of the discharged toxic-weighted pound equivalents, which EPA then uses as its estimate of the hazard posed by these pollutant discharges. EPA used the most recent 2007 data from the TRI, PCS, and ICIS–NPDES databases. The full description of EPA's methodology for the 2009 screening-level review is presented in the Technical Support Document (TSD) for the preliminary 2010 Plan (*see* DCN 06703) and the Technical Support Document for the Annual Review of Existing Effluent Guidelines and Identification of Potential New Point Source Categories (*see* DCN 06557).

EPA also developed a quality assurance project plan (QAPP) for its use of TRI, PCS, and ICIS–NPDES data in the 2009 annual review to document the type and quality of data needed to make the decisions in this annual review and to describe the methods for collecting and assessing those data (*see* DCN 06558). EPA used the following document to develop the QAPP for this annual review: ''EPA Requirements for QA Project Plans (QA/R–5), EPA–240–B01–003.'' Using the QAPP as a guide, EPA performed extensive quality assurance checks on the data used to develop estimates of toxic-weighted pollutant discharges (*i.e.,* verifying 2007 discharge data reported to TRI, PCS, and ICIS–NPDES) to determine if any of the pollutant discharge estimates relied on incorrect or suspect data. For example, EPA contacted facilities and permit writers to confirm and, as necessary, correct TRI, PCS, and ICIS–NPDES data for facilities that EPA had identified in its screening-level review as the significant dischargers of nutrients and of toxic and non-conventional pollution.

Based on this methodology, EPA prioritized for potential revision industrial categories that offered the greatest potential for reducing hazard to human health and the environment. EPA assigned those categories with the lowest estimates of toxic-weighted pollutant discharges a lower priority for revision (*i.e.,* industrial categories

[1] Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in Section VII.B, EPA is including hospitals in its review of the Health Care Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

marked ''(3)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice).

In order to further focus its inquiry during the 2009 annual review, EPA assigned a lower priority for potential revision to categories for which effluent guidelines had been recently promulgated or revised, or for which effluent guidelines rulemaking was currently underway (*i.e.,* industrial categories marked ''(1)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice). For example, EPA excluded facilities that are associated with the Chlorine and Chlorinated Hydrocarbon (CCH) Manufacturing effluent guidelines rulemaking from its 2009 hazard assessment of the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) and Inorganic Chemicals point source categories because the CCH rulemaking is underway.

Additionally, EPA applied less scrutiny to industrial categories for which EPA had promulgated effluent guidelines or pretreatment standards within the past seven years. EPA chose seven years because this is the time it customarily takes for the effects of effluent guidelines or pretreatment standards to be fully reflected in pollutant loading data and TRI reports (in large part because effluent limitations guidelines are often incorporated into NPDES permits only upon re-issuance, which could be up to five years after the effluent guidelines or pretreatment standards are promulgated). Because there are 57 point source categories (including over 450 subcategories) with existing effluent guidelines and pretreatment standards that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus on industries where changes to the existing effluent guidelines or pretreatment standards are most likely to be needed. In general, industries for which effluent guidelines or pretreatment standards have recently been promulgated are less likely to warrant such changes. However, in cases where EPA becomes aware of the growth of a new industrial activity within a category for which EPA has recently revised effluent guidelines or pretreatment standards, or where new concerns are identified for previously unevaluated pollutants discharged by facilities within the industrial category, EPA would apply more scrutiny. EPA identified no such instance during the 2009 annual review.

EPA also applied a lower priority to categories without sufficient data to determine whether revision would be appropriate. For any industrial categories marked ''(5)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice, EPA lacks sufficient information at this time on the magnitude of the toxic-weighted pollutant discharges. EPA will seek additional information on the discharges from these categories in the next annual review in order to determine whether a detailed study is warranted. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. This assessment (''preliminary category review'') provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. *See* the appropriate section in the TSD for the preliminary 2010 Plan (*see* DCN 06703) for EPA's data needs for these industrial categories.

For industrial categories marked ''(4)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice, EPA had sufficient information on the toxic-weighted pollutant discharges to continue or complete a detailed study of these industrial categories. EPA intends to use the detailed study to obtain information on hazard, availability and cost of technology options, and other factors in order to determine if it would be appropriate to identify the category for possible effluent guidelines revision. In the 2009 annual review, EPA continued or completed detailed studies of three such categories.

As part of its 2009 annual review, EPA also considered the number of facilities responsible for the majority of the estimated toxic-weighted pollutant discharges associated with an industrial activity. Where only a few facilities in a category accounted for the vast majority of toxic-weighted pollutant discharges (*i.e.,* categories marked ''(2)'' in the ''Findings'' column in Table V–1 in section V.B.4 of this notice), EPA applied a lower priority for potential revision. EPA believes that revision of individual permits for such facilities may be more effective than a revised national rulemaking. Individual permit requirements can be better tailored to these few facilities and may take considerably less time and resources to establish than revising the national effluent guidelines. The Docket accompanying this notice lists facilities that account for the vast majority of the estimated toxic-weighted pollutant discharges for particular categories (*see* DCN 06703). For these facilities, EPA will consider identifying pollutant control and pollution prevention technologies that will assist permit writers in developing facility-specific, technology-based effluent limitations on a best professional judgment (BPJ) basis. In future annual reviews, EPA also intends to re-evaluate each category based on the information available at the time in order to evaluate the effectiveness of the BPJ permit-based support.

EPA received comments in previous biennial planning cycles urging the Agency to encourage and recognize voluntary efforts by industry to reduce pollutant discharges, especially when the voluntary efforts have been widely adopted within an industry and the associated pollutant reductions have been significant. EPA agrees that industrial categories demonstrating significant progress through voluntary efforts to reduce hazard to human health or the environment associated with their effluent discharges would be a comparatively lower priority for effluent guidelines or pretreatment standards revision, particularly where such reductions are achieved by a significant majority of individual facilities in the industry. Although during this annual review EPA could not complete a systematic review of voluntary pollutant loading reductions, EPA's review did indirectly account for the effects of successful voluntary programs because any significant reductions in pollutant discharges should be reflected in discharge monitoring and TRI data, as well as any data provided directly by commenters, that EPA used to assess the toxic-weighted pollutant discharges.

As was the case in previous annual reviews, EPA was unable to gather the data needed to perform a comprehensive screening-level analysis of the availability of treatment or process technologies to reduce toxic pollutant wastewater discharges beyond the performance of technologies already in place for all of the 57 existing industrial categories. However, EPA believes that its analysis of hazard is useful for assessing the effectiveness of existing technologies because it focuses on the amount and significance of pollutants that are still discharged following existing treatment. Therefore, by assessing the hazard associated with discharges from all existing categories in its screening-level review, EPA was indirectly able to assess the possibility that further significant reductions could be achieved through new pollution control technologies for these categories. In addition, EPA directly assessed the availability of technologies for certain industries that were prioritized for a more in-depth review as a result of the screening level analysis.

Similarly, EPA could not identify a suitable screening-level tool for comprehensively evaluating the affordability of treatment or process technologies because the universe of facilities is too broad and complex. EPA could not find a reasonable way to prioritize the industrial categories based on readily available economic data. In the past, EPA has gathered information regarding technologies and economic achievability through detailed questionnaires distributed to hundreds of facilities within a category or subcategory for which EPA has commenced rulemaking. Such information-gathering is subject to the requirements of the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, *et seq.* The information acquired in this way is valuable to EPA in its rulemaking efforts, but the process of gathering, validating and analyzing the data can consume considerable time and resources. EPA does not think it appropriate to conduct this level of analysis for all point source categories in conducting an annual review. Rather, EPA believes it is appropriate to set priorities based on hazard and other screening-level factors identified above, and to directly consider the availability and affordability of technology only in conducting the more in-depth reviews of prioritized categories. For these prioritized categories, EPA may conduct surveys or other PRA-governed data collection activities in order to better inform the decision on whether effluent guidelines are warranted. Additionally, EPA is evaluating tools for directly assessing technological and economic achievability as part of the screening-level review in future annual reviews under section 301(d), 304(b), 304(m), and 307(b) (*see* DCN 07073). EPA solicits comment on how to best identify and use screening-level tools for assessing technological and economic achievability on an industry-specific basis as part of future annual reviews.

In summary, through its screening level review, EPA focused on those point source categories that appeared to offer the greatest potential for reducing hazard to human health or the environment, while assigning a lower priority to categories that the Agency believes are not good candidates for effluent guidelines or pretreatment standards revision at this time. This enabled EPA to concentrate its resources on conducting more in-depth reviews of certain industries prioritized as a result of the screening level analysis, as discussed below (*see* section V.A.3.b and c).

b. Further Review of Prioritized Categories

In the publication of the final 2008 Plan EPA identified one category, Ore Mining and Dressing (Part 440), for further investigation (''preliminary category review''), and a status report is included in this notice. EPA identified this category with ''(5)'' in the column entitled ''Findings'' in Table V–1, Page 53231 of the final 2008 Plan. EPA is not identifying any other categories for preliminary category reviews at this time.

In conducting a preliminary category review, EPA uses the same types of data sources used for the detailed studies but in less depth. For example, an assessment of the pollutant discharges provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. EPA is not conducting a detailed study for the Ore Mining and Dressing category at this time because EPA needs additional information regarding this industry to determine whether a detailed study is warranted. EPA plans to complete its analysis of this additional information for the final 2010 Plan.

c. Detailed Study of Three Categories

In this review cycle, EPA continued detailed studies of three categories: Steam Electric Power Generating (Part 423), Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Care Industry detailed study). For these industries, EPA gathered and analyzed additional data on pollutant discharges, economic factors, and technology issues. In general, EPA examines one or more of the following elements as part of a detailed study: (1) Wastewater characteristics and pollutant sources; (2) the pollutants discharged from these sources and the toxic weights associated with these discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

EPA is relying on many different sources of data including: (1) The 2002 U.S. Economic Census; (2) TRI, PCS, and ICIS–NPDES data; (3) contacts with reporting facilities to verify reported releases and facility categorization; (4) contacts with regulatory authorities (States and EPA regions) to understand how category facilities are permitted; (5) NPDES permits and their supporting fact sheets; (6) monitoring data included in facility applications for NPDES permit renewals (Form 2C data); (7) EPA effluent guidelines technical development documents; (8) relevant EPA preliminary data summaries or study reports; (9) technical literature on pollutant sources and control technologies; (10) information provided by industry including industry conducted survey and sampling data; and/or (11) stakeholder comments (*see* DCN 06703). Additionally, in order to evaluate available and affordable treatment technology options for the coalbed methane extraction industry sector, EPA is conducting an industry survey.

d. Public Comments

EPA's annual review process considers information provided by stakeholders regarding the need for new or revised effluent limitations guidelines and pretreatment standards. To that end, EPA established a docket for its 2009 annual review at the time of publication of the final 2008 Plan to provide the public with an opportunity to submit additional information to assist the Agency in its 2009 annual review. EPA received four public comments and placed these comments in the supporting docket (*see* EPA–HQ–OW–2008–0517–0045 through 0048, *http://www.regulations.gov*). One commenter requested that EPA expand its detailed study of coalbed methane extraction to include all oil and gas exploration, stimulation, and extraction techniques that result in contamination of surface and groundwater, including hydraulic fracturing in all formations. The other three commenters requested that EPA initiate an effluent guidelines rulemaking for the Steam Electric Power Generating category. In particular, they requested that EPA limit the discharges of metals from this category and eliminate the use of wet handling for coal combustion wastes.

B. What Were EPA's Findings From Its 2009 Annual Review for Categories Subject to Existing Effluent Guidelines and Pretreatment Standards?

1. Screening-level Review

In its 2009 screening level review, EPA considered hazard—and the other factors described in section A.3.a. above—in prioritizing effluent guidelines for potential revision. *See* Table V–1 in section V.B.4 of this notice

for a summary of EPA's findings with respect to each existing category; *see also* the TSD for the preliminary 2010 Plan. Out of the categories subject only to the screening level review in 2009, EPA is not identifying any for effluent guidelines rulemaking at this time, based on the factors described in section A.3.a above and in light of the effluent guidelines rulemakings and detailed studies in progress.

EPA carefully examined the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE). The TSD for the preliminary 2010 Plan presents a summary of EPA's review of these seven industrial categories (*see* DCN 06703).

2. Detailed Studies

a. Overview

In its 2009 annual review, EPA continued detailed studies of three industrial point source categories: Steam Electric Power Generating (Part 423), and Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Care Industry detailed study). EPA is investigating whether the pollutant discharges reported to TRI, PCS, and ICIS–NPDES for 2007 accurately reflect the current discharges. EPA is also analyzing the reported pollutant discharges, technology innovation, and process changes in these industrial categories. Additionally, EPA is considering whether there are industrial activities not currently subject to effluent guidelines or pretreatment standards that should be included with these existing categories, either as part of existing subcategories or as potential new subcategories. For Coalbed Methane Extraction and Health Care Industry EPA plans to use the detailed studies to determine whether EPA should identify in the final 2010 Plan (or a future Plan) either of these two industrial categories for possible revision of their existing effluent guidelines and pretreatment standards. EPA's reviews of two of three categories are described below and its review of hospitals is described in section VII.B (Health Care Industry detailed study).

b. Steam Electric Power Generating (Part 423)

EPA has completed a multi-year study of the Steam Electric Power Generating industry and, based on the results, has determined that revising the current effluent guidelines is warranted. EPA's decision to revise the current effluent guidelines is largely driven by the high level of toxic-weighted pollutant discharges from power plants and the expectation that these discharges will increase significantly in the next few years as new air pollution controls are installed. Over the course of the study EPA has identified technologies that are available to significantly reduce these pollutant discharges.

The Steam Electric Power Generating effluent guidelines (40 CFR 423) apply to a subset of the electric power industry, namely those facilities ''primarily engaged in the generation of electricity for distribution and sale which results primarily from a process utilizing fossil-type fuel (coal, oil, or gas) or nuclear fuel in conjunction with water system as the thermodynamic medium.'' *See* 40 CFR 423.10. EPA's most recent revisions to the effluent guidelines and standards for this category were promulgated in 1982 (*see* 47 FR 52290; November 19, 1982).

Since 2005, EPA has been carrying out an intensive review of wastewater discharges from power plants. As part of this effort, EPA has sampled wastewater from surface impoundments and advanced wastewater treatment systems, conducted on-site reviews of the operations at more than two dozen power plants, and issued a detailed questionnaire that obtained information on thirty power plants using authority granted under section 308 of the Clean Water Act. EPA's data collection primarily focused on four target areas: (1) Determining the pollutant characteristics of power plant wastewater; (2) identifying treatment technologies for the wastewater generated by air pollution control equipment; (3) characterizing the practices used by the industry to manage or eliminate discharges of fly ash and bottom ash wastewater; and (4) identifying methods for managing power plant wastewater that allow recycling and reuse, rather than discharge to surface waters. Much of the information collected thus far, including laboratory data from sampling, were made available to the public in an interim study report, ''Steam Electric Power Generating Point Source Category: 2007/2008 Detailed Study Report,'' (*see* EPA–HQ–OW–2006–0771–1699) and the final study report, ''Steam Electric Power Generating Point Source Category: Final Detailed Study Report,'' (*see* DCN 03690).

EPA's review of the wastewater characteristics indicates that most of the toxic pollutant loadings for this category are associated with metals and certain other elements present in wastewater discharges, and that the waste streams contributing the majority of these pollutants are associated with ash handling and wet flue gas desulfurization (FGD) systems. Other potential sources of these pollutants include coal pile runoff, metal cleaning wastes, coal washing, leachate from landfills and wastewater impoundments, and certain low-volume wastes.

Between July 2007 and October 2008, EPA conducted six sampling episodes to characterize untreated wastewaters generated by coal-fired power plants, including FGD wastewater, and fly ash and bottom ash transport water. EPA also collected samples to assess the effluent quality from different types of treatment systems currently in place at these operations. Samples were analyzed for metals and other pollutants, such as total suspended solids and nitrogen. Sampling reports for the first five episodes are included in the docket for the 2008 Plan, and the report for the final sampling episode is included in the docket for the 2010 Plan (*see* DCN 06197). These reports discuss the specific sample points and analytes, the sample collection methods used, the field quality control samples collected, and the analytical results for the wastewater samples.

EPA expects that the use of wet FGD systems will increase substantially over the next decade as State and Federal regulations are implemented to reduce air emissions. Metals and other pollutants are transferred from the flue gas to the wastewater produced by wet FGD systems. Based on results from the sampling and other data, EPA determined that there are unregulated toxic and conventional pollutants present in ash pond and FGD wastewater which can be reduced significantly with treatment technologies.

An increasing amount of evidence indicates that the characteristics of coal combustion wastewater have the potential to impact human health and the environment. Discharges of coal combustion wastewater have been associated with fish kills, reductions in the growth and survival of aquatic organisms, behavioral and physiological effects in wildlife and aquatic organisms, potential impacts to human health (*e.g.,* drinking water contamination), and changes to the local habitat. Many of the pollutants commonly found in coal combustion wastewater (*e.g.,* selenium, mercury, and arsenic) are known to cause environmental harm and potentially represent a human health risk. Although

coal-fired power plants often dilute coal combustion wastewater with other large volume wastewater (*e.g.,* cooling water) to reduce the pollutant concentrations prior to discharge, the effluent can contain large mass loads (*i.e.,* total pounds) of pollutants. Some of the pollutants in these discharges, although present at low concentrations, can bioaccumulate and present an increased ecological threat due to their tendency to persist in the environment, resulting in slow ecological recovery times following exposure. In addition, leachate from impoundments and landfills containing coal combustion wastes can contain high concentrations of pollutants and has been identified as a source of ground water and surface water impacts.

Additional information about data collected and findings of the detailed study of the Steam Electric Power Generating industry is presented in the final study report, ''Steam Electric Power Generating Point Source Category: Final Detailed Study Report,'' (*see* DCN 06390). The report includes data on the characteristics of wastewater from coal fired power plants, identifies the wastewater treatment technologies reviewed, presents an overview of the industry profile and predicted future trends in the use of air pollution controls, and describes environmental impacts that have been linked to coal combustion wastewater.

The Agency expects that data collection efforts for the effluent guidelines rulemaking will include wastewater sampling and issuing a survey that will obtain detailed technical and financial information. In particular, EPA recently published a **Federal Register** notice announcing its intent to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for their review and approval under the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, *et seq. See* 74 FR 55837 (October 29, 2009).

c. Oil and Gas Extraction (Part 435) (Only To Assess Whether To Include Coalbed Methane Extraction as a New Subcategory).

Coalbed methane (CBM) extraction activities accounted for about 7% of the total U.S. natural gas production (gross withdrawals) in 2007 and are expanding in multiple basins across the U.S. Currently, the Department of Energy's Energy Information Administration (EIA) expects CBM production to remain an important source of domestic natural gas over the next few decades.

CBM extraction requires removal of large amounts of water from underground coal seams before CBM can be released. CBM wells have a distinctive production history characterized by an early stage when large amounts of water are produced to reduce reservoir pressure which in turn encourages release of gas. This is followed by a stable stage when quantities of produced gas increase as the quantities of produced water decrease; and a late stage when the amount of gas produced declines and water production remains low (*see* EPA–HQ–OW–2004–0032–1904).

The quantity and quality of water that is produced in association with CBM development varies from basin to basin, within a particular basin, from coal seam to coal seam, and over the lifetime of a CBM well. Pollutants often found in these wastewaters include chloride, sodium, sulfate, bicarbonate, fluoride, iron, barium, magnesium, ammonia, and arsenic. Total dissolved solids (TDS) and electrical conductivity (EC) are bulk parameters that States typically use for quantifying and controlling the amount of pollutants in CBM produced waters.

EPA identified the coalbed methane (CBM) sector as a candidate for a detailed study in the final 2006 Effluent Guidelines Program Plan (71 FR 76656; December 21, 2006). As part of that announcement EPA made it clear that it would conduct data collection through an information collection request (ICR) to support this detailed study. In accordance with the Paperwork Reduction Act (PRA), EPA obtained approval from the Office of Management and Budget (OMB) for its ''Coalbed Methane Extraction Sector Survey'' on February 18, 2009. This approval followed two public comment periods on the survey (January 25, 2008; 73 FR 4556 and July 15, 2008; 73 FR 40757) and more than two years of outreach by EPA with interested stakeholders.

The approved mandatory survey, conducted under the authority of Section 308 of the Clean Water Act (33 U.S.C. Section 1318), includes a screener and a detailed questionnaire. EPA sent the screener questionnaire in February 2009 to all CBM methane operators that have three or more CBM wells. EPA used data from 291 screener questionnaires and state data on operators with one or two CBM wells to identify that in 2008 there were 56,049 CBM wells that operators managed in 692 different CBM projects. This CBM production, 2.0 trillion cubic feet, represents approximately 7.7 percent of the total U.S. natural gas production in 2008. The 692 CBM projects are located in 16 different CBM basins across the Nation but are mainly concentrated in the States of Wyoming, New Mexico, Oklahoma, and Alabama. EPA used these data to draw a representative sample of CBM projects. EPA began distribution of the detailed questionnaire to the representative sample of CBM projects in late October 2009. The detailed questionnaire will collect financial and technical data on approximately 250 CBM methane projects across the country.

EPA will use the screener and detailed questionnaires to collect technical and economic information from a wide range of CBM operations. EPA plans to collect information on geographical and geologic differences in the characteristics of CBM produced waters, environmental data, current regulatory controls, and availability and affordability of treatment technology options.

EPA also visited eight different CBM produced water treatment technologies in Wyoming. Included in these technologies are ion exchange, reverse osmosis, thermal distillation, and lined pit disposal and evaporation. These site visits supplemented EPA site visits to Pennsylvania, West Virginia, Virginia, Alabama, New Mexico, Colorado, Wyoming, and Montana in 2007 (*see* EPA–HQ–OW–2006–0771–0977).

EPA is also conducting a literature review of environmental impacts and beneficial uses of produced water. The literature review is being conducted in three phases focusing on: (1) Scientific journal articles, (2) documents retrieved from Web sites of State and Federal agencies, universities, and non-governmental organizations, and (3) environmentally sustainable beneficial uses of produced water. Results of the first phase are included in the docket (*see* DCN 06934). Additionally, EPA will be reviewing current requirements for surface water discharge of produced water. Currently, regulatory controls for CBM produced waters vary from State to State and permit to permit (*see* EPA–HQ–OW–2004–0032–2782, 2540). The assessment of State permitting requirements for surface water discharge of produced water will examine factors such as the number of current permits, the proportion of discharges covered under individual versus general permits, the types of pollutants controlled, and the numeric concentration limits required. This assessment will give EPA a better understanding of variations and consistencies among States in controlling CBM produced water discharges.

Finally, EPA is soliciting public comment on whether it should expand its detailed study of coalbed methane extraction to include all oil and gas

exploration, stimulation, and extraction techniques that result in contamination of surface and groundwater, including hydraulic fracturing in all formations.

3. Results of Preliminary Category Reviews

During the 2008 annual review, EPA identified the Ore Mining and Dressing (Part 440) category for a preliminary category review for two reasons: (1) The industry has a high TWPE discharge estimate of process wastewater (*i.e.,* EPA identified this category with ''(5)'' in the column entitled ''Findings'' in Table V–1, Page 53231 of the final 2008 Plan); and (2) comments received on previous Plans assert that better controls are needed for stormwater discharges to surface water at ore mining sites. Stormwater discharges from Ore Mining and Dressing facilities that are not commingled with process wastewater are not regulated by effluent guidelines but are regulated under individual or general stormwater NPDES permits. This preliminary category review is on-going.

EPA performed several analyses during the 2009 annual review. These analyses included: (1) Coordinating with the primary western ore mining States to collect information for mines classified as NPDES minor facilities (*i.e.,* collecting information States do not typically submit to EPA's ICIS or PCS databases); (2) reviewing journals and technical literature to identify the latest advances in wastewater treatment technologies; and (3) reviewing Total Maximum Daily Load (TMDL) plans to determine whether active ore mine discharges are discharging into impaired waterbodies. Section IX of this notice and the TSD for the preliminary 2010 Plan (*see* DCN 06703) lists the data and information that EPA would like to collect on the pollutant discharges and potential treatment technology options for the Ore Mining and Dressing category in order to complete this preliminary category review.

4. Summary of 2009 Annual Review Findings

In its 2009 annual review, EPA reviewed all categories subject to existing effluent guidelines and pretreatment standards in order to identify appropriate candidates for revision. Based on this review and prior annual reviews, and in light of the ongoing effluent guidelines rulemakings and detailed studies currently in progress, EPA has decided to pursue an effluent guidelines rulemaking for the Steam Electric Power Generating (Part 423) category. Additionally, EPA is continuing to conduct detailed studies for two existing categories: Oil and Gas Extraction (only with respect to coalbed methane) and Hospitals (part of the Health Care Industry detailed study).

A summary of the findings of the 2009 annual review is presented below in Table V–1. This table uses the following codes to describe the Agency's findings with respect to each existing industrial category.

(1) Effluent guidelines or pretreatment standards for this industrial category were recently revised or reviewed through an effluent guidelines rulemaking, or a rulemaking is currently underway.

(2) Revising the national effluent guidelines or pretreatment standards is not the best tool for this industrial category because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in this industrial category. EPA will consider assisting permitting authorities in identifying pollutant control and pollution prevention technologies for the development of technology-based effluent limitations by best professional judgment (BPJ) on a facility-specific basis.

(3) Not identified as a hazard priority based on data available at this time (*e.g.,* not among industries that cumulatively comprise 95% of reported hazard in TWPE units).

(4) EPA intends to continue a detailed study of this industry in its 2010 annual review to determine whether to identify the category for effluent guidelines rulemaking.

(5) EPA is continuing or initiating a preliminary category review because incomplete data are available to determine whether to conduct a detailed study or identify for possible revision. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of the industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. See the appropriate section in the TSD for the preliminary 2010 Plan (*see* DCN 06703) for EPA's data needs for industries in this category.

TABLE V–1—FINDINGS FROM THE 2009 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS CONDUCTED UNDER SECTION 301(D), 304(B), 304(G), 304(M), AND 307(B)

No.	Industry Category (Listed Alphabetically)	40 CFR part	Findings †
1	Aluminum Forming	467	(3)
2	Asbestos Manufacturing	427	(3)
3	Battery Manufacturing	461	(3)
4	Canned and Preserved Fruits and Vegetable Processing	407	(3)
5	Canned and Preserved Seafood Processing	408	(3)
6	Carbon Black Manufacturing	458	(3)
7	Cement Manufacturing	411	(3)
8	Centralized Waste Treatment	437	(3)
9	Coal Mining	434	(3)
10	Coil Coating	465	(3)
11	Concentrated Animal Feeding Operations (CAFO)	412	(1)
12	Concentrated Aquatic Animal Production	451	(1)
13	Construction and Development	450	(1)
14	Copper Forming	468	(3)
15	Dairy Products Processing	405	(3)
16	Electrical and Electronic Components	469	(3)
17	Electroplating	413	(1)
18	Explosives Manufacturing	457	(3)
19	Ferroalloy Manufacturing	424	(3)
20	Fertilizer Manufacturing	418	(3)

TABLE V–1—FINDINGS FROM THE 2009 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS CONDUCTED UNDER SECTION 301(D), 304(B), 304(G), 304(M), AND 307(B)—Continued

No.	Industry Category (Listed Alphabetically)	40 CFR part	Findings †
21	Glass Manufacturing	426	(3)
22	Grain Mills	406	(3)
23	Gum and Wood Chemicals	454	(3)
24	Hospitals [2]	460	(4)
25	Ink Formulating	447	(3)
26	Inorganic Chemicals ‡	415	(1) and (3)
27	Iron and Steel Manufacturing	420	(1)
28	Landfills	445	(3)
29	Leather Tanning and Finishing	425	(3)
30	Meat and Poultry Products	432	(1)
31	Metal Finishing	433	(1)
32	Metal Molding and Casting	464	(3)
33	Metal Products and Machinery	438	(1)
34	Mineral Mining and Processing	436	(3)
35	Nonferrous Metals Forming and Metal Powders	471	(3)
36	Nonferrous Metals Manufacturing	421	(3)
37	Oil and Gas Extraction	435	(4)
38	Ore Mining and Dressing	440	(5)
39	Organic Chemicals, Plastics, and Synthetic Fibers ‡	414	(1) and (3)
40	Paint Formulating	446	(3)
41	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
42	Pesticide Chemicals	455	(3)
43	Petroleum Refining	419	(3)
44	Pharmaceutical Manufacturing	439	(3)
45	Phosphate Manufacturing	422	(3)
46	Photographic	459	(3)
47	Plastic Molding and Forming	463	(3)
48	Porcelain Enameling	466	(3)
49	Pulp, Paper, and Paperboard	430	(3)
50	Rubber Manufacturing	428	(3)
51	Soaps and Detergents Manufacturing	417	(3)
52	Steam Electric Power Generating ††	423	(1)
53	Sugar Processing	409	(3)
54	Textile Mills	410	(3)
55	Timber Products Processing	429	(3)
56	Transportation Equipment Cleaning	442	(3)
57	Waste Combustors	444	(3)

† **Note:** The descriptions of the "Findings" codes are presented immediately prior to this table.

‡ **Note:** Two codes ("(1)" and "(3)") are used for this category as both codes are applicable to this category and do not overlap. The first code ("(1)") refers to the ongoing effluent guidelines rulemaking for the Chlorinated Hydrocarbon (CCH) manufacturing sector, which includes facilities currently regulated by the OCSPF and Inorganics effluent guidelines. The second code ("(3)") indicates that the remainder of the facilities in these two categories do not represent a hazard priority at this time.

†† **Note:** EPA is using the preliminary 2010 Plan to conclude its detailed study of this category and to announce its decision to identify the category for an effluent guidelines rulemaking.

VI. EPA's 2010 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), 304(m), and 307(b)

As discussed in section V and further in section VIII, EPA is coordinating its annual reviews of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 307(b) and 304(g) with the publication of preliminary Plans and biennial Plans under section 304(m). Public comments received on EPA's prior reviews and Plans helped the Agency prioritize its analysis of existing effluent guidelines and pretreatment standards during the 2009 review. The information gathered during the 2009 annual review, including the identification of data gaps in the analysis of certain categories with existing regulations, in turn, provides a starting point for EPA's 2010 annual review. *See* Table V–1 in section V.B.4 of this notice. In 2010, EPA intends to again conduct a screening-level analysis of all 57 categories and compare the results against those from previous years.

EPA will also conduct further review of the industrial categories currently regulated by existing effluent guidelines that cumulatively comprise 95% of the reported hazard (reported in units of toxic-weighted pound equivalent or TWPE). Additionally, EPA intends to continue detailed studies of the following two categories with existing effluent guidelines and pretreatment standards: Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory) and Hospitals (Part 460) (which is part of the Health Care Industry detailed study). EPA is continuing its preliminary category review for the Ore Mining and Dressing category in the 2010 annual review. EPA invites comment and data on the two detailed studies, the one preliminary category review, and all remaining point source categories.

[2] Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in Section VII.D, EPA is including hospitals in its review of the Health Care Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards to Identify Potential New Categories for Pretreatment Standards

A. EPA's Evaluation of Pass Through and Interference of Toxic and Non-Conventional Pollutants Discharged to POTWs

All indirect dischargers are subject to general pretreatment standards (40 CFR 403), including a prohibition on discharges causing ''pass through'' or ''interference.'' *See* 40 CFR 403.5. All POTWs with approved pretreatment programs must develop local limits to implement the general pretreatment standards. All other POTWs must develop such local limits where they have experienced ''pass through'' or ''interference'' and such a violation is likely to recur. There are approximately 1,500 POTWs with approved pretreatment programs and 13,500 small POTWs that are not required to develop and implement pretreatment programs.

In addition, EPA establishes technology-based national regulations, termed ''categorical pretreatment standards,'' for categories of industry discharging pollutants to POTWs that may pass through, interfere with or otherwise be incompatible with POTW operations. CWA section 307(b). Generally, categorical pretreatment standards are designed such that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. EPA has promulgated such pretreatment standards for 35 industrial categories.

One of the tools traditionally used by EPA in evaluating whether pollutants ''pass through'' a POTW is a comparison of the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BAT. Pretreatment standards for existing sources are technology based and are analogous to BAT effluent limitations guidelines. In most cases, EPA has concluded that a pollutant passes through the POTW when the median percentage removed nationwide by representative POTWs (those meeting secondary treatment requirements) is less than the median percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant. This approach to the definition of ''pass through'' satisfies two objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers; and (2) that the treatment capability and performance of POTWs be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers.

The term ''interference'' means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with applicable regulations or permits. *See* 40 CFR 403.3(i). To determine the potential for ''interference,'' EPA generally evaluates the industrial indirect discharges in terms of: (1) The compatibility of industrial wastewaters and domestic wastewaters (*e.g.,* type of pollutants discharged in industrial wastewaters compared to pollutants typically found in domestic wastewaters); (2) concentrations of pollutants discharged in industrial wastewaters that might cause interference with the POTW collection system, the POTW treatment system, or biosolids disposal options; and (3) the potential for variable pollutant loadings to cause interference with POTW operations (*e.g.,* batch discharges or slug loadings from industrial facilities interfering with normal POTW operations).

If EPA determines a category of indirect dischargers causes pass through or interference, EPA would then consider the BAT and BPT factors (including ''such other factors as the Administrator deems appropriate'') specified in section 304(b) to determine whether to establish pretreatment standards for these activities. Examples of ''such other factors'' include a consideration of the magnitude of the hazard posed by the pollutants discharged as measured by: (1) The total annual TWPE discharged by the industrial sector; and (2) the average TWPE discharge among facilities that discharge to POTWs. Additionally, EPA would consider whether other regulatory tools (*e.g.,* use of local limits under Part 403) or voluntary measures would better control the pollutant discharges from this category of indirect dischargers. For example, EPA relied on a similar evaluation of ''pass through potential'' in its prior decision not to promulgate national categorical pretreatment standards for the Industrial Laundries industry. *See* 64 FR 45071 (August 18, 1999). EPA noted in this 1999 final action that, ''While EPA has broad discretion to promulgate such [national categorical pretreatment] standards, EPA retains discretion not to do so where the total pounds removed do not warrant national regulation and there is not a significant concern with pass through and interference at the POTW.'' *See* 64 FR 45077 (August 18, 1999).

EPA reviewed TRI 2007 discharge data in order to identify industry categories without categorical pretreatment standards that are discharging pollutants to POTWs that may pass through, interfere with or otherwise be incompatible with POTW operations (*see* DCN 06703). This review did not identify any such industrial categories. EPA also evaluated stakeholder comments and pollutant discharge information in the previous annual reviews to inform this review. In particular, EPA received stakeholder comments on the issues of dental amalgam and unused pharmaceuticals management for the Health Care Industry in response to the 2007 annual review. As discussed in the final 2008 Plan EPA is again not identifying dental facilities for an effluent guidelines rulemaking in this notice at this time (September 15, 2008; 73 FR 53233). However, EPA is continuing its study of unused pharmaceutical management for the Health Care Industry.

EPA also solicits comment and data on all industrial sectors not currently subject to categorical pretreatment standards for its 2010 review. Finally, EPA solicits comment on data sources and on methods for collecting and aggregating pollutant discharge data collected by pretreatment programs to further inform its future review of industry categories without categorical pretreatment standards.

B. Unused Pharmaceuticals

To date, scientists have identified numerous pharmaceutical compounds at discernable concentrations in our nation's rivers, lakes, and streams (*see* EPA–HQ–OW–2006–0771–1694). To address this issue at the source, EPA is studying how the drugs are entering our waterways and what factors contribute to the current situation. Towards this end, EPA initiated a study on pharmaceutical disposal practices at health care facilities including hospitals, hospices, long-term care facilities, health care clinics, doctor's offices, and veterinary facilities. Unused pharmaceuticals include dispensed prescriptions that patients do not use as well as materials that are beyond their expiration dates. Another potential source of unused pharmaceuticals is the residuals remaining in used and partially used dispensers, containers,

and devices. In particular, the medications contained in the dispensers, containers and devices may be sewered (*e.g.,* intravenous (IV) bags emptied into sink).[3] For many years, a standard practice at many health care facilities was to dispose of unused pharmaceuticals by flushing them down the toilet or drain.

For the 2008 final Plan, EPA completed an interim technical report for the Health Care Industry (*see* EPA–HQ–OW–2006–0771–1694). The interim technical report focused on hospitals and long-term care facilities (LTCFs) because these facilities are likely responsible for the largest amounts of unused pharmaceuticals being disposed into sewage collection systems within this industry sector. In 2005, there were about 7,000 hospitals and 35,000 LTCFs in the United States (*see* EPA–HQ–OW–2006–0771–1694). EPA is continuing its detailed study to investigate the following questions:

- What are the current industry practices for disposing of unused pharmaceuticals?
- What types of pharmaceuticals are being disposed?
- What are the options for disposing of unused pharmaceuticals other than down the drain or toilet?
- What factors influence disposal decisions?
- Do disposal practices differ within industry sectors?
- What Best Management Practices (BMPs) could facilities implement to reduce the generation of unused pharmaceuticals?
- What are the costs of current disposal practices compared to the costs of implementing BMPs or alternative disposal methods?

Since the publication of the final 2008 plan, EPA also reviewed comments received on the first **Federal Register** notice for the health care industry ICR published on August 12, 2008 (73 FRN 46903). The ICR was originally developed to collect technical and economic information on unused pharmaceutical management and to identify technologies and BMPs that reduce or eliminate the discharge of unused pharmaceuticals to POTWs. EPA received 31 comments and conducted outreach meetings with industry to obtain further comments on the survey design and instrument.

Commenters included hospitals and clinics, health care trade associations, pharmacists associations, reverse distributors, pharmaceutical manufacturers, individuals, and municipal wastewater treatment plants and their associations. Following publication of the first **Federal Register** notice for the ICR, EPA conducted three teleconferences in September 2008 with 259 stakeholders to provide an overview of the project, scope of the survey instrument, potential recipients, and schedule. These meetings solicited early feedback from participants to facilitate the development of a subsequent draft of the survey instrument and population and sample frames. These teleconferences also identified interested stakeholders for the site visits/additional outreach meetings. Overall, the comments received were supportive of the survey. Most commenters had a number of suggestions on how to improve the survey. Improvements suggested were to expand the scope of sectors receiving the survey, to shorten the survey, and to tailor the survey to each health care sector. There were a few health care organizations who felt a survey was not necessary for a variety of reasons including burden to the facilities, that they are already practicing BMPs, or that they would favor the more immediate issuance of EPA guidance.

In addition to exploring the use of an industry survey, EPA has continued to study the issue of how health care facilities are managing and disposing of unused pharmaceuticals and POTW treatment effectiveness in an effort to identify the root cause and potential solutions to address the issue of pharmaceuticals in our waterways. Since the publication of the final 2008 Plan, EPA conducted site visits to 3 additional hospitals in 3 States, four LTCFs in three States, a veterinary hospital, a long-term care pharmacy, a hospice, an oncology clinic, and a waste management vendor facility to obtain more detailed information on how pharmaceuticals are managed, tracked, and disposed as well as influences on behavior (*see* DCN 06496). During each site visit, EPA collected general site information and specific unused pharmaceutical management and disposal information. The objectives of these site visits included:

- Collect information on the amount of unused pharmaceuticals disposed when available;
- Observe pharmaceutical waste management practices;
- Identify common industry disposal practices, guidance, and regulatory requirements;
- Identify challenges with the generation and disposal of unused, unwanted, and expired pharmaceuticals;
- Identify BMPs and their costs; and
- Gather information about how hospitals, LTCFs, or other facilities operate.

Additionally, EPA contacted other types of health care facilities (*e.g.,* medical and dental offices, university and prison health clinics, and veterinary clinics) to learn about their unused pharmaceutical disposal practices. EPA also reviewed studies on POTW pharmaceutical treatment effectiveness and the potential pathways for unused pharmaceuticals to be released into the environment (*see* DCN 06571).

In summary, since the study began in 2007 EPA has worked with a wide range of stakeholders (*e.g.,* industry representatives; Federal, State, local and Tribal government representatives; waste management and disposal companies; and other interested parties) to obtain the best available information on the industry and its unused pharmaceutical management practices. In total, EPA met or spoke with over 700 different people during the outreach and data collection activities from 2007 through 2009 (*see* DCN 06496). Based on its outreach and data gathering, the Agency estimates that hospitals and long-term care facilities have the greatest amounts of unused pharmaceuticals as compared with other health care sectors (*e.g.,* dentist, retail pharmacies).

EPA's outreach has also identified that there is near universal interest from stakeholders to better manage unused pharmaceuticals at health care facilities. There is also general interest in more quickly advancing the use of best practices for managing unused pharmaceuticals at health care facilities. This considerable outreach and data collection has led EPA to re-consider the use of an industry survey for this sector. The survey would be an effective but potentially time-consuming tool for gathering facility-specific data on the management of unused pharmaceuticals. EPA estimates that it has gathered sufficient data from its site visits and outreach to begin the development of best practices for unused pharmaceutical management at health care facilities. During the next year EPA will continue to work with a variety of stakeholders in the development of these best practices and the means for their dissemination and adoption. EPA expects to complete the development of these best practices for the final 2010 Plan.

[3] As a point of clarification, the term ''unused pharmaceuticals'' does not include excreted pharmaceuticals.

VIII. The Preliminary 2010 Effluent Guidelines Program Plan Under Section 304(m)

In accordance with CWA section 304(m)(2), EPA is publishing this preliminary 2010 Plan for public comment prior to this publication of the final 2010 Plan.

A. EPA's Schedule for Annual Review and Revision of Existing Effluent Guidelines Under Section 304(b) and 304(m)

1. Schedule for 2009 and 2010 Annual Reviews Under Section 304(b) and 304(m)

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a Plan every two years that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that section. This preliminary 2010 Plan announces EPA's schedule for performing its section 304(b) reviews. The schedule is as follows: EPA will coordinate its annual review of existing effluent guidelines under section 304(b) with its publication of the preliminary and final Plans under CWA section 304(m). In other words, in odd-numbered years, EPA intends to complete its annual review upon publication of the preliminary Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA intends to complete its annual review upon the publication of the final Plan. EPA's 2009 annual review ends with the publication of this preliminary 2010 Plan in this notice.

EPA is coordinating its annual reviews under section 304(b) with publication of Plans under section 304(m) for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review can inform the content of the preliminary and final Plans, *e.g.,* by identifying candidates for ELG revision for which EPA can schedule rulemaking in the Plan, or by calling to EPA's attention point source categories for which EPA has not promulgated effluent guidelines. Second, even though not required to do so under either section 304(b) or section 304(m), EPA believes that the public interest is served by periodically presenting to the public a description of each annual review (including the review process employed) and the results of the review. Doing so at the same time EPA publishes preliminary and final plans makes both processes more transparent. Third, by requiring EPA to review all existing effluent guidelines each year, Congress appears to have intended that each successive review would build upon the results of earlier reviews. Therefore, by describing the 2009 annual review along with the preliminary 2010 Plan, EPA hopes to gather and receive data and information that will inform its reviews for 2010 and the final 2010 Plan.

2. Schedule for Possible Revision of Effluent Guidelines Promulgated Under Section 304(b)

EPA is currently conducting a rulemaking to potentially revise existing effluent guidelines and pretreatment standards for the following categories: Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) and Inorganic Chemicals (to address discharges from Vinyl Chloride and Chlor-Alkali facilities identified for effluent guidelines rulemaking in the final 2004 Plan, now termed the ''Chlorine and Chlorinated Hydrocarbon (CCH) manufacturing'' rulemaking). EPA previously indicated it would conduct an industry survey for this effluent guidelines rulemaking (April 18, 2006; 71 FR 19887). EPA is considering its next steps for this survey and the rulemaking as it reviews data from a voluntary industry monitoring program. EPA worked with industry to develop the extensive monitoring program to better understand the category's pollutant discharges. EPA has decided to pursue an effluent guidelines rulemaking for the Steam Electric Power Generating (Part 423) category. EPA is not scheduling any other existing effluent guidelines for rulemaking at this time.

B. Identification of Potential New Point Source Categories Under CWA Section 304(m)(1)(B)

The final Plan must also identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. *See* CWA section 304(m)(1)(B); S. Rep. No. 99–50, Water Quality Act of 1987, Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to ''non-trivial discharges''). The final Plan must also establish a schedule for the promulgation of effluent guidelines for the categories identified under section 304(m)(1)(B), providing for final action on such rulemaking not later than three years after the identification of the category in a final Plan. *See* CWA section 304(m)(1)(C). EPA also has a duty to promulgate effluent guidelines within three years for new categories identified in the Plan. *See NRDC et al.* v. *EPA,* 437 F.Supp.2d 1137 (C.D. Ca, 2006).

EPA is currently conducting an effluent guidelines rulemaking for one new industrial category—Airport Deicing Operations—which was identified as a potential new category in the final 2004 Plan (September 2, 2004; 69 FR 53705). EPA published a notice of proposed rulemaking for this category on August 28, 2009 (74 FR 44676). Additionally, EPA recently completed an effluent guidelines rulemaking for the Construction and Development category (40 CFR 450) because it was directed to do so by a district court order. *NRDC et al.* v. *EPA,* No. 04–8307, order (C.D. Ca., December 6, 2006). EPA proposed effluent guidelines for this category on November 28, 2008 (73 FR 72561) and published final effluent guidelines on December 1, 2009 (74 FR 62995). EPA is not at this time proposing to identify any other potential new categories for effluent guidelines rulemaking and therefore is not scheduling effluent guidelines rulemaking for any such categories in this preliminary Plan.

In order to identify industries not currently subject to effluent guidelines, EPA primarily used data from TRI, PCS, and ICIS–NPDES. Facilities with data in TRI, PCS, and ICIS–NPDES are identified by a four-digit SIC code or six-digit North American Industry Classification System (NAICS) code (*see* DCN 06557). NAICS codes are a new economic classification system that replaces the SIC system, which has traditionally been used by the Federal Government for collecting and organizing industry-related statistics. The PCS and ICIS–NPDES data systems use SIC codes while the TRI system recently switched to NAICS codes.

EPA performs a crosswalk between the TRI, PCS, and ICIS–NPDES discharge data, identified with SIC or NAICS codes, and the 57 point source categories with effluent guidelines or pretreatment standards to determine if each SIC or NAICS code is currently regulated by existing effluent guidelines (*see* DCN 06703). EPA also relied on comments received on its previous 304(m) plans to identify potential new categories. EPA then assessed whether these industrial sectors not currently regulated by effluent guidelines meet the criteria specified in section 304(m)(1)(B), as discussed below. EPA notes that the Ninth Circuit has recently held that the precise number and kind of categories identified by EPA in its 304(m) planning process is discretionary with the Administrator.

Our Children's Earth v. *EPA,* 527 F.3d 842, 852 (9th Cir. 2008).

The first criterion for identifying industries under section 304(m)(1)(B) is whether they are ''categories of sources'' for which EPA has not promulgated effluent guidelines. Because this section does not define the term ''categories,'' EPA interprets this term based on the use of the term in other sections of the Clean Water Act, legislative history, and Supreme Court case law, and in light of longstanding Agency practice. These sources indicate that the term ''categories'' refers to an industry as a whole based on similarity of product produced or service provided, and is not meant to refer to specific industrial activities or processes involved in generating the product or service. EPA therefore interprets section 304(m)(1)(B) in its biennial Plan as only applying to those new industries that it determines are properly considered stand-alone ''categories'' within the meaning of the Act—not those that are properly considered potential new subcategories of existing categories based on similarity of product or service.

EPA's interpretation of the term ''categories'' is consistent with longstanding Agency practice. Pursuant to CWA section 304(b), which requires EPA to establish effluent guidelines for ''classes and categories of point sources,'' EPA has promulgated effluent guidelines for 57 industrial ''categories.'' Each of these ''categories'' consists of a broad array of facilities that produce a similar product or perform a similar service—and is broken down into smaller subsets, termed ''subcategories,'' that reflect variations in the processes, treatment technologies, costs and other factors associated with the production of that product that EPA is required to consider in establishing effluent guidelines under section 304(b). For example, the ''Pulp, Paper and Paperboard point source category'' (40 CFR part 430) encompasses a diverse range of industrial facilities involved in the manufacture of a like product (paper); the facilities range from mills that produce the raw material (pulp) to facilities that manufacture end-products such as newsprint or tissue paper. EPA's classification of this ''industry by major production processes used many of the statutory factors set forth in CWA Section 304(b), including manufacturing processes and equipment (*e.g.,* chemical, mechanical, and secondary fiber pulping; pulp bleaching; paper making); raw materials (*e.g.,* wood, secondary fiber, non-wood fiber, purchased pulp); products manufactured (*e.g.,* unbleached pulp, bleached pulp, finished paper products); and, to a large extent, untreated and treated wastewater characteristics (*e.g.,* BOD loadings, presence of toxic chlorinated compounds from pulp bleaching) and process water usage and discharge rates.''[4] Each subcategory reflects differences in the pollutant discharges and treatment technologies associated with each process. Similarly, the ''Iron and Steel Manufacturing point source category'' (40 CFR part 420) consists of various subcategories that reflect the diverse range of processes involved in the manufacture of iron and steel, ranging from facilities that make the basic fuel used in the smelting of iron ore (subpart A—Cokemaking) to those that cast the molten steel into molds to form steel products (subpart F—Continuous Casting). An example of an industry category based on similarity of service provided is the Transportation Equipment Cleaning Point Source Category (40 CFR Part 442), which is subcategorized based on the type of tank (*e.g.,* rail cars, trucks, barges) or cargo transported by the tanks cleaned by these facilities, reflecting variations in wastewaters and treatment technologies associated with each.

The second criterion EPA considers when implementing section 304(m)(1)(B) also derives from the plain text of that section. By its terms, CWA section 304(m)(1)(B) applies only to industrial categories to which effluent guidelines under section 304(b)(2) or section 306 would apply, if promulgated. Therefore, for purposes of section 304(m)(1)(B), EPA would not identify in the biennial Plan any industrial categories comprised exclusively or almost exclusively of indirect discharging facilities regulated under section 307.

Third, CWA section 304(m)(1)(B) applies only to industrial categories of sources that discharge toxic or non-conventional pollutants to waters of the United States. EPA therefore did not identify in the Plan industrial activities for which conventional pollutants, rather than toxic or non-conventional pollutants, are the pollutants of concern. In addition, even when toxic and non-conventional pollutants might be present in an industrial category's discharge, section 304(m)(1)(B) does not apply when those discharges occur in trivial amounts. This decision criterion leads EPA to focus on those remaining industrial categories where, based on currently available information, new effluent guidelines have the potential to address a non-trivial discharge of toxic or non-conventional pollutants.

Finally, EPA interprets section 304(m)(1)(B) to give EPA the discretion to identify in the Plan only those potential new categories for which an effluent guidelines rulemaking may be an appropriate tool for controlling discharges. Therefore, EPA does not identify in the Plan all potential new categories discharging toxic and non-conventional pollutants. Rather, EPA identifies only those potential new categories for which it believes that effluent guidelines may be appropriate, taking into account Agency priorities, resources and the full range of other CWA tools available for addressing industrial discharges.

IX. Request for Comment and Information

A. EPA Requests Information on the Coalbed Methane Sector of the Oil and Gas Extraction Category (Part 435)

EPA is researching the following questions and topics as they relate to the quantity and toxicity of pollutants discharged and the environmental impacts of these discharges to support the Oil and Gas Extraction/Coalbed Methane detailed study.

■ What is the range of pollutant concentrations in CBM produced water?

■ What is the toxicity of these pollutants to human health and the environment?

■ What is the range of pollutant concentrations and what are the CBM produced water flow rates for the major CBM basins?

■ What CBM produced water pollutants are typically controlled through permit limits and what is the range of these permit limits?

■ What are the observed and potential impacts of CBM produced water discharges on aquatic environments and communities, riparian zones, and other wetlands?

■ How does the composition of CBM produced water change when discharged to normally dry draws or ephemeral streams? In particular, to what extent do CBM produced water discharges mobilize metals, soil nutrients, pesticides and other organic contaminants present in soil and carry these constituents to surface waters?

■ What are measures that can mitigate potential impacts to use of surface waters for irrigation? EPA is researching the following questions and topics as they relate to the potential technology options and beneficial use practices for this industrial sector.

[4] U.S. EPA, 1997. *Supplemental Technical Development Document for Effluent Limitations Guidelines and Standards for the Pulp, Paper, and Paperboard Category,* Page 5–3, EPA–821–R–97–011, October 1997.

■ What are the current industry treatment technologies for CBM produced water?

■ What are the potential beneficial use applications of CBM produced water and what are the corresponding criteria for such uses?

■ How effectively do these treatment technologies and beneficial use practices reduce the potential adverse impacts of CBM produced water discharges?

■ What is the range of incremental annualized compliance costs associated with these technologies and practices? How do these costs differ between existing and new sources?

■ What is the demonstrated use and economic affordability (*e.g.,* production losses, firm failures, employment impacts resulting from production losses and firm failures, impacts on small businesses) of these technologies across the different CBM basins?

■ What are the types of non-water quality environmental impacts (including energy impacts) associated with the current industry treatment technologies and beneficial use practices for CBM produced water?

EPA is researching the following questions and topics as they relate to the expansion of CBM exploration and development and the affordability of potential technology options for this industrial sector.

■ What is the near-term and long-term growth rate for this industry sector? Which CBM basins are likely to experience the most growth within the next ten years?

■ What are the current industry drilling and infrastructure expansion plans for CBM exploration and development?

■ What is the predicted range of CBM reserves across the different basins that would be economically recoverable at different natural gas prices?

■ What are the potential impacts on developing CBM reserves and operator profitability and rates of return on investment of any increased costs associated with potential industry treatment technologies and beneficial use practices for CBM produced water discharges?

■ What is the difference between potential impacts on existing sources versus new sources?

■ What percentage of CBM operators are considered small entities?

EPA is researching the following questions and topics as they relate to current regulatory controls.

■ How do NPDES permit programs regulate CBM produced water discharges (*e.g.,* individual permits, general permits)?

■ What is the BPJ basis for existing technology-based effluent limits for CBM produced water discharges?

■ To what extent and how do current regulatory controls ensure the beneficial use of CBM produced water?

■ What other statutes might affect the ability to discharge, treat, or beneficially use CBM produced water (*e.g.,* SDWA, RCRA)?

B. EPA Requests Comments and Information on the Following as It Relates to Unused Pharmaceutical Management for the Health Care Industry

■ EPA solicits identification of any policies, procedures or guidelines that govern the disposal of unused pharmaceuticals from hospitals and hospices; offices of doctors and mental health practitioners; nursing, long-term care, rehabilitation, and personal care facilities; medical laboratories and diagnostic service facilities; and veterinary care facilities.

■ EPA solicits comment and data on: (1) The main factors that drive current disposal practices; and (2) any barriers preventing the reduction or elimination of unused pharmaceuticals to POTWs and/or surface waters. In particular, EPA solicits comment on the extent to which that the Controlled Substances Act (21 U.S.C. 801 *et. seq.*) complicates the design of an efficacious solution to drug disposal.

■ EPA solicits quantitative information or tracking sheets for the past year on the disposal of unused pharmaceuticals via the toilet, drain, or sewer.

■ EPA solicits data on how control authorities are currently controlling disposal of unused pharmaceuticals via wastewater.

■ EPA solicits information on any technologies or BMPs that are available to control, reduce, or eliminate the disposal of unused pharmaceuticals to POTWs.

■ EPA solicits qualitative and quantitative data on the effectiveness and annualized costs of the technologies or BMPs that health service facilities use to control or eliminate the discharge of unused pharmaceuticals from their wastewater. EPA is also interested in obtaining information on the current costs (including labor) associated with disposal of unused pharmaceuticals via the drain or toilet.

■ EPA solicits any studies or information on the potential for unused pharmaceuticals that are disposed of in non-hazardous-waste landfills to contaminate underground resources of drinking water.

C. Preliminary Category Review for the 2010 Annual Review

EPA requests information on the Ore Mining and Dressing category (*i.e.,* the industrial point source category with existing effluent guidelines identified with ''(5)'' in the column entitled ''Findings'' in Table V–1 in section V.B.4 of this notice). EPA will need to collect more information for the 2010 annual review. Specifically, EPA hopes to gather the following information:

■ What toxic pollutants are discharged from this industry category in non-trivial amounts on an industry and per-facility basis?

■ What raw material(s) or process(es) are the sources of these pollutants?

■ What technologies or management practices are available (technically and economically) to control or prevent the generation and/or release of these pollutants?

D. Data Sources and Methodologies

EPA solicits comments on whether EPA used the correct evaluation factors, criteria, and data sources in conducting its annual review and developing this preliminary Plan. EPA also solicits comment on other data sources EPA can use in its annual reviews and biennial planning process. Please see the docket for a more detailed discussion of EPA's analysis supporting the reviews in this notice (*see* DCN 06703).

E. BPJ Permit-Based Support

EPA solicits comments on whether and if so how, the Agency should provide EPA Regions and States with permit-based support instead of revising effluent guidelines (*e.g.,* when the vast majority of the hazard is associated with one or a few facilities). EPA solicits comment on categories for which the Agency should provide permit-based support.

F. Identification of New Industrial Categories and Sectors

EPA solicits comment on the methodology for grouping industrial sectors currently not subject to effluent guidelines or pretreatment standards for review and prioritization, and the factors and measures EPA should consider for determining whether to identify such industries for a rulemaking. EPA solicits comment on other data sources and approaches EPA can use to identify industrial sectors currently not subject to effluent guidelines or pretreatment standards for review and prioritization.

G. Implementation Issues Related to Existing Effluent Guidelines and Pretreatment Standards

As a factor in its decision-making, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. Consequently, EPA solicits comment on implementation issues related to existing effluent guidelines and pretreatment standards.

Notice of Availability of Preliminary 2010 Effluent Guidelines Program Plan

H. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

EPA solicits comments on its evaluation of categories of indirect dischargers without categorical pretreatment standards. Specifically, EPA solicits wastewater characterization data (*e.g.,* wastewater volumes, concentrations of discharged pollutants), current examples of pollution prevention, treatment technologies, and local limits for all industries without pretreatment standards. EPA also solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the general pretreatment standards.

Dated: December 17, 2009.

Peter S. Silva,

Assistant Administrator for Water.

[FR Doc. E9–30625 Filed 12–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0877; FRL–8803–6]

Registration Review; Ethylene Docket Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a registration review docket for the pesticide ethylene (case 3071). With this document, EPA is opening the public comment period for this registration review. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open a registration review docket for encapsulated *Bacillus thuringiensis* proteins. This pesticide does not currently have any actively registered pesticide products and is not, therefore, scheduled for review under the registration review program.

DATES: Comments must be received on or before February 26, 2010.

ADDRESSES: Submit your comments identified by docket identification (ID) number EPA–HQ–OPP–2009–0877, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0877. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide-specific information contact*: Driss Benmhend, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; fax number: (703) 308–7026; e-mail address: *Benmhend.driss@epa.gov*.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a

wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide-specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. Authority

EPA is initiating its review of the pesticide ethylene pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Review

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registration for ethylene to assure that it continues to satisfy the FIFRA standard for registration—that is, it can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening a registration review docket for ethylene (case number 3071) (docket ID number EPA–HQ–OPP–2009–0877).

EPA is also announcing that it will not be opening a docket for three strains of encapsulated *Bacillus thuringiensis* proteins (case 6001) because these strains of this pesticide are not included in any products actively registered under FIFRA section 3 or 24(c). Within case 6001 there are three different active ingredients holding exemptions from the requirement of a tolerance, as expressed in 40 CFR part 180.

1. *Delta endotoxin variety San Diego*. The registrant, Ecogen Inc., held the last registered product (EPA Reg. No. 55638–44) containing the active ingredient, delta endotoxin of *Bacillus thuringiensis* variety *San Diego* encapsulated into killed *Pseudomonas fluorescens*. The Ecogen Inc. product was voluntarily canceled on October 24, 2003, due to non-payment of maintenance fees (68 FR 62785, November 6, 2003) (FRL–7331–3). As provided at 40 CFR 180.1108, products containing the delta endotoxin of *Bacillus thuringiensis* variety *San Diego* into killed *Psuedomonas fluorescens* are exempt from the requirement of a tolerance in or on all raw agricultural commodities (56 FR 28325, June 20, 1991) (FRL–3931–9).

2. *Delta endotoxin variety kurstaki*. The registrant, Ecogen Inc., held the last registered product (EPA Reg. No. 55638–48) containing the active ingredient, delta endotoxin of *Bacillus thuringiensis* variety *kurstaki* encapsulated into killed *Pseudomonas fluorescens*. The Ecogen Inc. product was voluntarily canceled on October 15, 2004, due to non-payment of maintenance fees (69 FR 62666, October, 27 2004) (FRL–7683–7). As provided at 40 CFR 180.1107, products containing the delta endotoxin of *Bacillus thuringiensis* variety *kurstaki* into killed *Psuedomonas fluorescens* are exempt from the requirement of a tolerance in or on all raw agricultural commodities (56 FR 28326, June 20, 1991) (FRL–3931–8).

3. *CrylA(c) and CrylC Delta endotoxin*. The registrant, Ecogen Inc., held the last registered product (EPA Reg. No. 55638–47) containing the active ingredients, Cry1A(c) and Cry1C derived delta endotoxins of *Bacillus thuringiensis* variety *kurstaki* encapsulated in killed *Pseudomonas fluorescens*. The Ecogen Inc. product was voluntarily canceled on October 15, 2004, due to non-payment of maintenance fees (69 FR 62666, October, 27 2004) (FRL–7683–7). As provided at 40 CFR 180.1154, products containing the delta-endotoxin of *Bacillus thuringiensis* variety *kurstaki* into killed *Psuedomonas fluorescens* are exempt from the requirement of a tolerance when used in or on all raw

agricultural commodities (60 FR 47487, September 13, 1995) (FRL–4973–3).

The Agency will take separate actions to propose revocation of any affected tolerances that are not supported for import purposes only.

B. Docket Content

1. *Review docket.* The registration review docket contains information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

The docket contains a document summarizing what the Agency currently knows about the ethylene case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration review of the pesticide ethylene. The Agency identifies in the docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on the ethylene case, including the active ingredients for the case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for the ethylene case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 16, 2009.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–30622 Filed 12–24–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0817; FRL–9095–3]

Stakeholder Input; Stormwater Management Including Discharges From New Development and Redevelopment

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its plans to initiate national rulemaking to establish a comprehensive program to reduce stormwater discharges from new development and redevelopment and make other regulatory improvements to strengthen its stormwater program. The purpose of this notice is to request input from the public to help EPA shape such a comprehensive program and to announce EPA's intent to hold several public ''listening sessions'' in January 2010. EPA seeks input on this undertaking regarding performance, effectiveness and cost of stormwater control measures; ecological data, including ecological benefits from stormwater controls; technical information on design, implementation and operation and maintenance of stormwater control measures; suggestions for how the existing program may be modified to better meet the goals of the Clean Water Act; and any other information that may help EPA develop improvements to the existing program, including better control of pollutants in stormwater from the built environment created by development and redevelopment.

DATES: Written comments must be submitted on or before February 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0817, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2009–0817.
- *Fax:* 202–566–9744.
- *Mail:* Water Docket, U.S. Environmental Protection Agency, Mail code: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–OW–2009–0817.
- *Hand Delivery:* Water Docket, EPA Docket Center, EPA West Building Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2009–0817. 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–OW–2009–0817. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: For further information on the notice, contact Jonathan Angier, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202–564–0729 or e-mail: *angier.jonathan@epa.gov*.

Public Listening Sessions: EPA will hold several informal public listening sessions in January 2010 to gather input on possible regulatory changes to the stormwater program. The public listening sessions will provide a review of EPA's current regulatory approach to permitting stormwater discharges, a summary of the recommendations from the National Research Council report *Urban Stormwater Management in the United States* (The National Academies Press, 2009), and potential considerations for regulatory changes to strengthen the program. The public listening sessions will afford an opportunity for the public to provide input on regulatory actions that EPA is considering. Brief oral comments (three minutes or less) will be accepted at the sessions, and written statements will be accepted. The dates and locations of the listening sessions are as follows:

- January 19, 2010, 10 a.m. to 3 p.m. at EPA Region 5 Office, 77 W. Jackson Blvd., Chicago, IL 60604
- January 20, 2010, 10 a.m. to 3 p.m. at EPA Region 9 Office, 75 Hawthorne Street, San Francisco, CA 94105
- January 25, 2010, 10 a.m. to 3 p.m. at EPA Region 8 Office, 1595 Wynkoop Street, Denver, CO 80202–1129
- January 26, 2010, 10 a.m. to 3 p.m. at EPA Region 6 Office, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202
- January 28, 2010, 10 a.m. to 3 p.m. at EPA HQ Office, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20004

In order to provide adequate seating for those wishing to attend EPA's public listening sessions, interested individuals must register to attend by January 15, 2010 on the Internet at *http://www.epa.gov/npdes/stormwater/rulemaking.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. 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–2009–0817. 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. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available 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 this notice and other stormwater documents are available at EPA's stormwater Web site *http://www.epa.gov/npdes/stormwater/rulemaking.*

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.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'', then key in the appropriate docket identification number.

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.A.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 discs mailed to EPA, mark the surface of the disc as CBI. Also identify electronically the specific information contained in the disc 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.

It is important to note that EPA's policy is that public input, 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 input contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies any input containing copyrighted material, EPA will provide a reference to that material in the version of the document that is placed in EPA's electronic public docket. The entire printed submittal, including the copyrighted material, will be available in the public docket.

Documents submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Input that is 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.

B. How and to Whom Do I Submit Input?

You may submit input electronically, by mail, through hand delivery/courier, or in person by attending one of the 5 listening sessions. To ensure proper receipt by EPA, identify the appropriate

docket identification number in the subject line on the first page of your input. Please ensure that your input is submitted within the specified comment period.

1. Electronically. If you submit electronic input 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 submittal due to technical difficulties or needs further information on the substance of your input. EPA's policy is that EPA will not edit your input, and any identifying or contact information provided in the body of the text will be included as part of the input that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your submittal due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your input.

i. EPA Dockets. Your use of EPA's electronic public docket to provide input to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting input. Once in the system, select ''search'', and then key in Docket ID No. EPA–HQ–OW–2009–0817. 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.

ii. E-mail. Input may be sent by electronic mail (e-mail) to *ow-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2009–0817. 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 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 submittal that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD–ROM. You may submit input on a disk or CD–ROM that you mail to the mailing address identified in this section. 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 input to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2009–0817.

3. By Hand Delivery or Courier. Deliver your input to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OW–2009–0817. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays).

II. Background

Statutory and Regulatory Overview

Under section 402(p) of the Clean Water Act, the Environmental Protection Agency regulates stormwater discharges from municipal separate storm sewer systems (publicly owned conveyances or systems of conveyances that discharge to waters of the U.S. and are designed or used for collecting or conveying storm water, are not combined sewers, and are not part of a publicly owned treatment works), stormwater discharges associated with industrial activity, and stormwater discharges from construction sites of one acre or larger. See 40 CFR 122.26(a). Under EPA's regulations, these stormwater discharges are required to be covered by National Pollutant Discharge Elimination System (NPDES) permits.

EPA developed the stormwater regulations under section 402(p) in two phases, as directed by the statute. In the first phase, under section 402(p)(4), EPA promulgated regulations establishing application requirements for NPDES permits for stormwater discharges from medium and large municipal separate storm sewer systems (MS4s) (serving populations of 100,000 or more) and stormwater discharges associated with industrial activity. EPA published the final Phase I rule on November 16, 1990 (55 FR 47990). *See* 40 CFR 122.26. The Phase I rule, among other things, defined ''stormwater discharges associated with industrial activity'' to include construction sites of five acres or larger. 40 CFR 122.26(b)(14)(x). In the second phase, under section 402(p)(5) and (6), EPA was required to conduct a study to identify other stormwater discharges that needed further controls to protect water quality, report to Congress on the results of the study, and to designate for regulation additional categories of stormwater discharges not regulated in Phase I. EPA promulgated the Phase II rule on December 8, 1999, designating small MS4s and small construction sites (1–5 acres) and requiring NPDES permits for these discharges. 64 FR 68722.

With respect to MS4s, the Phase I regulations are primarily application requirements that identify components that must be addressed in permit applications from large and medium MS4s. The regulations require these MS4s to develop a stormwater management program (SWMP), track and oversee industrial facilities regulated under the NPDES stormwater program, conduct monitoring, and submit periodic reports.

Under the Phase II rule, regulated small MS4s are generally defined as any MS4 that is not already covered by the Phase I program and that are located within the urbanized area boundary as determined by the U.S. Decennial Census. Separate storm sewer systems such as those serving military bases, universities, large hospital or prison complexes, and highways are also included in the definition of ''small MS4.'' 40 CFR 122.26(b)(16). In addition, a small MS4 located outside of an urbanized area may be designated as a regulated small MS4 if the NPDES permitting authority determines that its discharges cause, or have the potential to cause, an adverse impact on water quality. *See* 40 CFR 122.32(a)(2), 123.35(b)(3).

Phase II stormwater regulations also require that the MS4, under the permit, implement stormwater management programs (SWMPs), and require that the SWMPs include six minimum control measures. The minimum control measures are: Public education and outreach, public participation and involvement, illicit discharge detection and elimination, construction site runoff control, post construction runoff control, pollution prevention and good housekeeping. Regulations applicable to Phase II MS4 permits are found in 40 CFR 122.30–122.37. In general, Phase II MS4 permits are general permits, although small MS4s may apply for individual permits under the Phase I rule's application provisions in 40 CFR 122.26(d).

Under section 402(p)(6), EPA is authorized to designate additional stormwater discharges to be regulated other than those already regulated, and to establish a comprehensive program to regulate them. In addition, under EPA's stormwater regulations, EPA (or States authorized to administer the NPDES program) may require NPDES permits

for currently unregulated stormwater discharges by designating discharges pursuant to 40 CFR 122.26(a)(9)(i)(C) or (D).

National Research Council Report

In 2006, EPA asked the National Research Council (NRC) to conduct a review of its stormwater program, considering all entities regulated under the program, i.e., municipal, industrial and construction. In October 2008, the National Research Council released the report *Urban Stormwater Management in the United States* (The National Academies Press, 2009) finding, among other things, that ''the rapid conversion of land to urban and suburban areas has profoundly altered how water flows during and following storm events, putting higher volumes of water and more pollutants into the nation's rivers, lakes, and estuaries. These changes have degraded water quality and habitat in virtually every urban stream system.''

This report recommends a number of actions, including conserving natural areas, reducing hard surface cover (e.g., roads and parking lots—impervious surface areas), and retrofitting urban areas with features that hold and treat stormwater (NRC, *Report in Brief,* 2008). EPA takes seriously the significant findings and recommendations included in the NRC Report, and continues to evaluate how the Agency's stormwater program can be strengthened in light of the report. The *Report in Brief* can be accessed at: *http://dels.nas.edu/dels/rpt_briefs/stormwater_discharge_final.pdf.* A full copy of the report can be obtained from The National Academies Press, *http://books.nap.edu/catalog.php?record_id=12465.* A prepublication copy is available at: *http://www.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf.*

EPA shares the NRC Committee's perspective that it is imperative that the stormwater regulations be as effective as possible in protecting water quality. The NRC Report has provided EPA with the opportunity to reexamine the effectiveness of its stormwater programs, some of which are nearly 20 years old. For instance, EPA is interested in assessing the level of accountability that the regulations and the permits issued under the regulations provide to MS4s to minimize the discharge of pollutants in stormwater. The role of MS4s in reducing stormwater impacts from the built environment is crucial and growing, given that these sources of adverse water quality impacts are continually expanding. As the urban, suburban and exurban human environment expands, there is an increase in impervious land cover and therefore an increase in stormwater discharges. This increase in impervious land cover reduces or eliminates the natural infiltration of precipitation, which greatly increases the volume of stormwater discharges. This increased volume of stormwater discharges results in the scouring of rivers and streams; degrading the physical integrity of aquatic habitats, stream function and overall water quality. In addition, the increase in impervious land cover results in the increase of the pollutant load discharged from storm sewers. As precipitation moves across roads, rooftops, and other impervious surfaces, it picks up pollutants that are then discharged, either directly or through storm sewers, to our Nation's waters.

To address the degradation of water quality caused by stormwater discharges from impervious cover, EPA is exploring regulatory options that would strengthen the stormwater program, including establishing specific post construction requirements for stormwater discharges from, at a minimum, new development and redevelopment. EPA does not currently regulate stormwater discharges from new development and redevelopment directly. However, both Phase I MS4s and Phase II MS4s are required through the MS4 permit to address stormwater discharges from new development and redevelopment in their SWMPs, but the regulations do not include specific management practices or standards to be implemented. Among the Phase I requirements for a SWMP is a ''comprehensive master plan to develop, implement, and enforce controls to reduce the discharge of pollutants from municipal storm sewers, which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed.'' (40 CFR 122.26(d)(2)(iv)(A)(2)).

Phase II regulations include post construction requirements as one of the six minimum control measures to be addressed in the SWMP. Small MS4s must ''develop, implement, and enforce a program to address'' stormwater discharges from new development and redevelopment projects of one acre or greater to ''ensure that controls are in place that would prevent or minimize water quality impacts.'' 40 CFR 122.34(b)(5). The program must include strategies including structural and/or non-structural best management practices (BMPs) appropriate for the community; use of ordinances or other regulatory mechanisms to the extent allowable under State, Tribal or local law; and measures to ensure adequate long-term operation and maintenance of BMPs. The Phase II rule recommends (but does not require) that the program to address stormwater from new development and redevelopment should attempt to maintain pre-development runoff conditions by installing and implementing stormwater control measures.

As stated in the report, the NRC found that ''stormwater permits leave a great deal of discretion to the regulated community to set their own standards and to self-monitor.'' As a result, across the Nation there is inconsistency in the NPDES program and in stormwater management programs required by NPDES permit with respect to stormwater discharges from MS4s caused by stormwater discharges from development. Despite the lack of specificity in the current regulations, some permitting authorities have required controls for stormwater discharges from developed property that neutralize the impacts from stormwater by promoting practices that retain stormwater on-site through infiltration, evapotranspiration, or stormwater reuse. To help make permitting more consistent and robust nationally, EPA is considering ways to strengthen the MS4 permit regulations, including establishing specific requirements for stormwater discharges from, at a minimum, new development and redevelopment; expanding the area defined as MS4s to include rapidly developing areas; and devising a single set of consistent regulations for all MS4s. In addition, EPA is exploring regulatory options to directly address stormwater discharges from new development and redevelopment, including new and redeveloped sites outside the MS4 boundary, that may be contributing to waterbody impairment, through the designation of an additional category or categories of discharges under CWA section 402(p)(6).

Proposed Information Collection Request (ICR)

EPA has proposed an Information Collection Request (ICR) to collect data to support this effort to strengthen the stormwater regulations (published October 30, 2009, 74 FR 56191). The proposed ICR discusses the administration of three questionnaires: The first for the owners, operators, developers, and contractors of new development and redevelopment; the second for the owners and operators of MS4s (including those not federally

regulated); and the third for the States and territories. The data collected through this ICR would support EPA's rulemaking activities by providing EPA with information to characterize the current level of stormwater controls and stormwater control measures; the area currently covered by federal and state stormwater requirements; the current burden and expenditures by States and MS4s associated with existing requirements; and technical, financial, and environmental data needed to quantify the incremental pollutant removals, compliance costs, and impacts for various regulatory options that EPA might consider. Under the proposed ICR, EPA seeks any available information concerning current stormwater control practices, including those referred to as green infrastructure or low-impact development. For further information, see: *http://www.epa.gov/npdes/stormwater/rulemaking*.

III. Input on Stormwater Practices and Considerations for Modifying Regulations

Today's notice is being issued to make the public aware of opportunities to provide input on current stormwater practices and to inform the public of and solicit comment on EPA's preliminary considerations for modifying or supplementing EPA's stormwater regulations. EPA is accepting information during the listening sessions and/or by submission of written comments in order to gain early public input on stormwater practices and regulations.

A. Solicitation for Additional Input Regarding Stormwater Control Practices

1. In addition to the information collection request described above, EPA is soliciting comment and input from the general public concerning current stormwater control practices, as well as information concerning innovative approaches to stormwater control. In particular, EPA is seeking information on the following aspects of structural approaches to stormwater control: design, performance, operation and maintenance, capital and lifetime cost, and environmental and economic benefit information on practices that retain stormwater on-site through infiltration, evapotranspiration, or stormwater reuse. EPA solicits comment and input on these retention practices that have been used for ''green field'' development, redevelopment (where there was some pre-existing infrastructure), and retrofitting existing development. While a significant amount of data has been collected and is available (see, EPA's Urban BMP Performance Tool (*http://www.epa.gov/npdes/stormwater/urbanbmp*) or the International Stormwater BMP Database (*http://www.bmpdatabase.org*)), EPA is accepting any more recent information that is not already available in these databases.

2. Cost comparisons of different stormwater management approaches for specific sites. EPA solicits comment and input on different stormwater management approaches, including comparison of stormwater management systems that rely primarily on conveyance and detention of excess discharge with stormwater management systems that relies primarily on on-site retention. Cost comparisons should preferably be between similar sized projects and/or between individual management methods of similar scope and capability.

3. Design, performance, operation and maintenance, capital and lifetime costs, and environmental and economic benefit information for communities and/or site owners or operators that have elected to modify or retrofit their stormwater management practices for existing development, as a separate effort that is not in conjunction with redevelopment. This may occur if the existing stormwater management practices were insufficient to reduce pollutants, restore habitat and stabilize stream morphology, or to correct past mistakes. This may also occur as part of a larger watershed restoration plan. EPA is also soliciting comments and input on: where retrofit practices have been installed, what the drivers were for the project, and information on the specific retrofit practices that were installed.

4. EPA is also soliciting comments and input on monitoring information that may have been collected to show the impacts of stormwater control measures on water quality and/or flow rates in the receiving waterbody. This includes information on the effects of retrofits for existing discharges (before and after installation, if possible), as well as any water monitoring information obtained before and after new development and redevelopment.

B. Preliminary Considerations for Modifying/Supplementing EPA's Stormwater Regulations

By today's notice, EPA is informing the public of its preliminary considerations for modifying or supplementing EPA's stormwater regulations and soliciting public input on these considerations. The following are ideas that EPA is considering for strengthening the stormwater requirements and for which EPA seeks input:

1. *Expand the area subject to federal stormwater regulations.* EPA currently requires MS4s within Census-designated urbanized areas to apply for permit coverage (see *http://www.epa.gov/npdes/stormwater/urbanmaps* for maps of all urbanized areas). Based on the 1990 Census, there are 405 urbanized areas in the United States that cover 2% of total U.S. land area and contain approximately 63 percent of the Nation's population. Under the present regulations, development that is occurring outside currently regulated MS4s may not be subject to federal controls to protect water quality notwithstanding the fact that the resulting stormwater discharges may be contributing to waterbody impairment. For example, for Phase II MS4s, only the portion of the municipal jurisdiction (i.e. township) that is within the Census-designated urbanized area is required to be regulated, which may leave stormwater discharges in parts of the jurisdiction unregulated.

EPA solicits comments and input from the public on the need for expanding the area subject to federal regulation, and, if needed, how to expand the coverage of the federal stormwater program beyond the Census urbanized area boundary. EPA would be interested in views on (1) How to identify the appropriate jurisdictional boundaries for permit coverage, including the township, county, sewer district, or others; (2) how to identify areas that should be covered based on development pressures and to protect water quality; and (3) whether EPA should consider regulating stormwater discharges from particular types or sizes of development that are not covered by an MS4 permit.

2. *Establish specific requirements to control stormwater discharges from new development and redevelopment.* EPA is considering establishing specific requirements, including standards, to control stormwater discharges from new development and redevelopment. EPA welcomes comments on what standard or standards could apply to new development and redevelopment that promote sustainable practices that mimic natural processes to (1) Infiltrate and recharge, (2) evapotranspire, and/or (3) harvest and reuse precipitation. For example, there could be a national requirement for on-site stormwater controls such that post development hydrology mimics predevelopment hydrology on a site-specific basis. EPA could establish a suite of specific options of standards for meeting such a requirement, for example, on-site retention of a specific size storm event in an area, limits on the amount of

effective impervious surfaces (defined as impervious surfaces with direct hydraulic connection to the downstream drainage (or stream) system, also referred to as directly connected impervious area), use of site-specific calculations to determine predevelopment hydrology, and/or use of regional specific standards to reflect local circumstances. EPA could require these standards as part of the MS4 permit on a site-specific basis. EPA is interested in input regarding the need for and the type of standards to set. Should the standard be different for discharges from new development versus redevelopment and, if so, how should it differ? Are there specific circumstances in which (for example) a requirement for new development and redevelopment to maintain pre-development hydrology would not be advisable or would cause other environmental impacts? Finally, EPA is interested in input regarding responsibility for maintaining stormwater control measures that infiltrate, evapotranspirate and/or reuse water.

The impacts from stormwater discharges from new and redevelopment occur not only within the MS4 but also from sources outside the MS4 regulated areas. EPA is interested in input regarding the appropriate framework for implementing standards for new and redevelopment outside of the MS4 regulations.

3. Develop a single set of consistent requirements for Phase I and Phase II MS4s. EPA's Phase I regulations primarily contain application requirements that identify components that must be addressed in permit applications. The Phase II regulations establish six ''minimum measures'' that must be included in an MS4 permit that were more specific than Phase I. Many Phase I and Phase II permits address issues that are virtually identical. EPA requests input on whether EPA should modify the regulations to develop a consistent set of requirements that would apply to all regulated MS4s. For example, should EPA apply the six minimum measures to all MS4s? Should EPA add other measures? For instance, Phase I MS4s are required to implement a program to control discharges for industrial facilities in their service area. Should this requirement be extended to all MS4s? EPA also requests input on any other modifications to improve the stormwater regulations.

4. Require MS4s to address stormwater discharges in areas of existing development through retrofitting of the sewer system, drainage area, or individual structures with improved stormwater control measures. Stormwater discharge from large areas of impervious cover in developed areas is a significant contributor to water quality impairments in the receiving waters of urban areas. Changes to the stormwater management practices in areas of existing development will reduce these impacts. In some states, MS4 permits now require the MS4 to install retrofit practices that infiltrate or otherwise retain stormwater in areas of existing development to reduce these impacts. EPA requests input on whether it should consider requirements for the retrofit of existing development to address stormwater. In particular, EPA requests comment on requiring MS4s to develop a long-term retrofit implementation plan that is targeted to addressing stormwater problems in urban waters.

5. Whether EPA should include additional changes to the stormwater regulations (for example, requiring permits to include buffer requirements) in sensitive areas. EPA is interested in views on whether it should consider making any other changes to the current regulatory program (e.g., specific structural or nonstructural stormwater control measures) in addition to the ones described above to protect waterbodies in sensitive areas.

Dated: December 17, 2009.

Peter Silva,

Assistant Administrator, Office of Water.

[FR Doc. E9–30627 Filed 12–24–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Renewal of a Currently Approved Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC hereby gives notice that it is seeking public comment on renewal of its ''Foreign Banks'' information collection (OMB No. 3064–0114). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the FDIC should modify the collection prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before February 26, 2010.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.*
- *Mail:* Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information about the information collection discussed in this notice, please contact Leneta G. Gregorie, by telephone at (202) 898–3719 or by mail at the address identified above.

SUPPLEMENTARY INFORMATION: The FDIC is proposing to renew, without change, the following information collection.

Title: Foreign Banks.

Estimated Number of Respondents and Burden Hours:

FDIC collection	Hours per response	Number of respondents	Times per year	Burden hours
Application to move a branch	8	1	1	8
Application for consent to operate a noninsured branch	8	1	1	8
Application to conduct activities	8	1	1	8
Recordkeeping	120	10	1	1,200

FDIC collection	Hours per response	Number of respondents	Times per year	Burden hours
Pledge of assets:				
Records	0.25	10	4	10
Reports	2	10	4	80
Total Burden				1,314

General Description of Collection: The collection involves information obtained in connection with applications for consent to move an insured state-licensed branch of a foreign bank (12 CFR 303.184); applications to operate as a noninsured state-licensed branch of a foreign bank (12 CFR 303.186); applications from an insured state-licensed branch of a foreign bank to conduct activities which are not permissible for a federally-licensed branch (12 CFR 303.187); internal recordkeeping requirements for such branches (12 CFR 347.209(e)(4)); and reporting and recordkeeping requirements relating to the pledge of assets by such branches (12 CFR 347.209(e)(4) and (e)(6).

Current Action: The FDIC is proposing to renew the existing information collection without change, with the exception of an adjustment of −258 hours to reflect a slight decrease in the number of respondents.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's request to OMB for renewal of the information collection. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of December 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–30604 Filed 12–24–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 25, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. TLCM Holdings,LLC, Richardson, Texas,; to become a bank holding company by acquiring 100 percent of the voting shares of EJ Financial Corp., Dallas, Texas, and EJ Delaware Bancshares, Inc., Dover, Delaware, and thereby indirectly acquire Equity Bank, SSB, Dallas, Texas.

Board of Governors of the Federal Reserve System, December 22, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30631 Filed 12–24–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 2010.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Bank of China Limited, Beijing, China; to engage de novo through its subsidiary BOC International (USA) Inc., New York, New York,in securities brokerage, riskless principal, and private placement activities pursuant to sections 225.28(b)(7)(i), 225.25(b)(7)(ii) and 225.28(b)(7)(iii) of Regulation Y; and to engage through its subsidiary BOC Aviation (USA) Corp., Reno, Nevada, in leasing activities pursuant to section 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30630 Filed 12–24–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–; 30-day notice]

Agency Information Collection Request. 30-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 collection 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) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

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. E9–30592 Filed 12–24–09; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0346; 30-day notice]

Agency Information Collection Request; 30-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 collection 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) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: HITECH Act Breach Notification–OMB No. 0990–0346-Extension-Office of Civil Rights.

Abstract: The Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5) requires the Office for Civil Rights to collect information regarding breaches discovered by covered entities and their business associates under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164). ARRA was enacted on February 17, 2009. The Department of Health and Human Services (HHS) issued interim final regulations on August 24, 2009 (74 FR 42740), which became effective September 23, 2009, to require HIPAA covered entities and their business associates to provide notification in the case of breaches of unsecured protected health information. Section 164.404 of this interim final regulation requires HIPAA covered entities to notify affected individuals of a breach of their unsecured protected health information and, in some cases, to notify the media of such breaches pursuant to § 164.406. Section 164.408 requires covered entities to provide the Secretary with immediate notice of all breaches of unsecured protected health information involving more than 500 individuals. Additionally, the Act requires covered entities to provide the Secretary with an annual log of all breaches of unsecured protected health information that involve less than 500 individuals. Finally, business associates must notify the covered entity of any breaches that occur subject to § 164.410.

Type of respondent	Number of respondents	Average number of responses per respondent	Average burden hours per response	Total burden hours
Individual Notice—Written and E-mail Notice (drafting, preparing, sending, and documenting notification)	106	1	206	21,836
500 or More Affected Individuals (investigating and documenting breach)	56	1	44	2,464
Less than 500 Affected Individuals (investigating and documenting breach)	50	1	8	400
Individual Notice—Substitute Notice (posting or publishing)	70	1	1	70
Individual Notice—Substitute Notice (toll-free number)	70	1	3,438	240,660
Media Notice	56	1	1	56
Notice to Secretary (notice for breaches affecting 500 or more individuals and annual notice and maintenance of annual log)	106	1	140/60	247
TOTAL				265,733

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–30593 Filed 12–24–09; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology HIT Policy Committee's NHIN 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 subcommittee meeting of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee's Nationwide Health Information Network (NHIN) Workgroup.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed. The NHIN Workgroup is charged with creating a policy and technical framework that allows the internet to be used for the secure and standards-based exchange of health information, in a way that is open to all and fosters innovation.

Date and Time: The meeting will be held on January 7, 2010, from 9 a.m. to 12:30 p.m./Eastern Time.

Location: To be determined. Please check the ONC Web site for additional information as it becomes available. The meeting will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web.

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 workgroup will be discussing the nationwide health information network (NHIN), with a primary emphasis on authentication mechanisms used by the NHIN and the private sector. The workgroup will be hearing testimony from stakeholder groups. 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 committee meeting, and the background material will be posed 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 on or before January 4, 2010. Oral comments from the pubic will be scheduled between approximately 11 a.m. and noon/Eastern Time. Time allotted for each presentation will be limited to three minutes. 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 Workgroup 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: December 18, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–30673 Filed 12–24–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DI–IHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *acmh@osophs.dhhs.gov.*

DATES: The meeting will be held on Tuesday, January 5, 2010 from 9 a.m. to 5 p.m. and Wednesday, January 6, 2010 from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. *Phone:* 240–433–2882; *Fax:* 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 103–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Secretary, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business December 29, 2009.

Dated: December 10, 2009.

Garth Graham,

Deputy Assistant Secretary for Minority Health, Office of Minority Health, Office of Public Health and Science, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. E9–30278 Filed 12–24–09; 8:45 am]

BILLING CODE 4150–29–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Opportunity for Co-Sponsorship of the President's Challenge Physical Activity and Fitness Awards Program

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of the President's Council on Physical Fitness and Sports.

ACTION: Notice.

SUMMARY: The Office of the President's Council on Physical Fitness and Sports (PCPFS) announces the opportunity for non-Federal public and private sector entities to co-sponsor and administer a series of financially self-sustaining activities related to the President's Challenge Physical Activity and Fitness Awards Program (President's Challenge). Potential co-sponsors must have a demonstrated interest in and be capable of managing the day to day operations associated with the program and be willing to participate substantively in the co-sponsored activity.

DATES: To receive consideration, a request to participate as a co-sponsor must be received by 5 p.m. EST on Friday, February 12, 2010 at the address listed. Requests will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Private metered postmarks will not be accepted as proof of timely mailing. Hand-delivered requests must be received by 5 p.m. Requests that are received after the deadline date will be returned to the sender.

ADDRESSES: Proposals for co-sponsorship should be sent to Jane Wargo, Program Analyst, Office of the President's Council on Physical Fitness and Sports, 200 Independence Avenue, SW., Room 738H, Washington, DC 20201; *Ph:* (202) 690.5157, *Fax:* (202) 690.5211. Proposals may also be submitted by electronic mail to *jane.wargo@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jane Wargo, Program Analyst, Office of the President's Council on Physical Fitness and Sports, *Ph:* (202) 690.5157, *E-mail: jane.wargo@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The PCPFS was established as the President's Council on Youth Fitness by President Eisenhower in 1956. The PCPFS operates under Executive Order (E.O.) 13265 continued by E.O. 13446. The Council advises the President, through the Secretary, about progress promoting physical activity, fitness, and sports. Specifically, the Council, as outlined in E.O. 13265, Section (1)(b), is directed to ''stimulate and enhance coordination of programs within and among the private and public sectors that promote participation in, and safe and easy access to, physical activity and sports'' and Section (1)(c) ''expand

availability of quality information and guidance regarding physical activity and sports participation.'' In addition, the Council, as stated in Section (3)(d) ''shall monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and shall advise the Secretary as necessary concerning such need.''

The purpose of the President's Challenge is to motivate individuals six years and older to start and maintain a regular program of physical activity leading to improved health and fitness. Since its inception in 1966, the program has reached millions of American youth. In 2002 the program expanded to include adults aged 18 and older through the Presidential Active Lifestyle Award, Presidential Champions Program, and the Adult Fitness Test. Program materials are available in English and Spanish.

Requirements of Co-Sponsorship: The Office of the PCPFS is seeking a co-sponsoring organization(s) capable of managing the development and distribution of program awards and materials, responding to program inquiries, administering a program website, and identifying ways to enhance the program and participation. This co-sponsorship agreement will be in place for a period of four years beginning on September 1, 2010.

Awards Programs

A. *Active Lifestyle Program:* Recognizing individuals aged six and older for being physically active on a regular basis. Participants are encouraged to track their participation using an interactive web-based physical activity tracker or a paper log. Award included in this program: Presidential Active Lifestyle Award.

B. *Presidential Champions Program:* A web-based points program for individuals aged six and older. There is an advanced component to the program, which requires additional points in all categories. Awards included in this program: Platinum, Gold, Silver, and Bronze Awards.

C. *Physical Fitness Program:* Two award levels recognize youth (ages 6–17) for achieving an outstanding and basic level of fitness on a five item test. The third award in the series recognizes youth for attempting all five items, but falling below the basic level in one or more events. Awards included in this program: Presidential Physical Fitness Award, National Physical Fitness Award, Participant Physical Fitness Award.

D. *Health Fitness Program:* Recognizes youth (ages 6–17) who achieve a healthy level of fitness based on five test items, including an assessment of Body Mass Index. Award included in this program: Health Fitness Award.

E. *Adult Fitness Test:* A web-based test for adults aged 18 and older. No awards are linked to this test.

School Recognition Program

A. Physical Fitness State Champion Program—Based on results of the Physical Fitness Program, schools are recognized for having the highest percentage of Presidential Physical Fitness Award winners for their state, based on enrollment (minimum 50 students).

B. Physical Activity and Fitness Demonstration Center Program—Recognizing the important role that schools play in the lives of their students, this program rewards those schools that have demonstrated an outstanding commitment toward physical activity and fitness both in and out of their physical education classroom. Demonstration Center Schools may be designated as such for no more than three years, after which time, they are eligible to be listed as Honor Roll schools. This program utilizes a network of volunteer coordinators to help verify adherence to the Demonstration Center criteria.

C. Active Lifestyle Model School Program—Model schools have 35 percent or more of their total school enrollment earn the PALA two or more times during the school year.

Distribution Center

Each of these program areas shall involve the promotion and distribution of award items. These items may include, but are not limited to, emblems, medallions, ribbons, lapel pins, certificates, bumper stickers, magnets, booklets, pedometers, and apparel. Participating organizations and individuals purchase awards and other program materials directly from the administering organization for a nominal fee. This program is designed to be financially self-sustaining.

Web site Administration

Administration of the President's Challenge Program Web site (*http://www.presidentschallenge.org* and *http://www.adultfitnesstest.org*) shall consist of, but not be limited to, the following: hosting, maintenance, customer service, online order center, and a listserv. All work performed in association with these websites shall be Section 508 compliant.

Additional Roles and Responsibilities

The co-sponsoring organization(s) shall help promote the program through outreach activities that may include exhibiting at conferences, speaking at events, and using social media. The co-sponsoring organization shall identify and recommend ways to enhance the program experience, delivery, and outreach.

Eligibility for Co-Sponsorship: To be eligible, a requester shall: (1) Have a demonstrated interest and understanding of physical fitness, physical activity, and/or sport; (2) participate substantively in the co-sponsored activity (not just provide funding or logistical support); (3) have an organizational or corporate mission that is consistent with the public health and safety mission of the Department; and (4) agree to sign a co-sponsorship agreement with the Office of the PCPFS which will set forth the details of the co-sponsored activity including the requirements that any fees raised should not be designed to exceed the co-sponsor's costs, and fees collected by the co-sponsor shall be limited to the amount necessary to cover the co-sponsor's related operating expenses.

The organization selected shall furnish the necessary personnel, materials, services, and facilities to administer the President's Challenge program, including the purchase and/or production of all program and award materials; distribution of program and award materials; promotion and statistical evaluation of the program; quarterly and annual budget and demographic reports; maintenance of partnership list; and other administrative duties. These duties will be determined in a Memorandum of Agreement and an annual plan.

Co-Sponsorship Proposal: Each co-sponsorship proposal shall contain a description of: (1) The entity or organization; (2) its background in promoting physical activity, fitness, and/or sport; (3) its proposed involvement in the co-sponsored activity; and (4) plan for implementation with a timeline.

Evaluation Criteria: The Office of the PCPFS will select the co-sponsor using the following evaluation criteria:

(1) Requester's qualifications and capability to fulfill co-sponsorship responsibilities;

(2) Requester's creativity for enhancing the program, including the medium through which program messages are delivered and ideas for improving program offerings;

(3) Requester's potential for reaching underserved/special populations;

(4) Requester's experience administering national awards programs;

(5) Requester's past or current work specific to national programs or projects in the area(s) of physical activity, fitness, or sports among individuals and in schools and organizations;

(6) Requester's personnel: name, professional qualifications and specific expertise of key personnel who would be available to work on these projects;

(7) Requester's facilities: availability and description of facilities required to administer the program including office space and information technology and telecommunication resources;

(8) Requester's description of financial management: discussion of experience in developing an annual budget and collecting and managing monies from organizations and individuals;

(9) Requester's proposed plan for managing the PCPFS awards programs, including such financial aspects as Web site development and/or enhancement, cost of program materials and distribution of those items.

Availability of Funds: There are no Federal funds available for this co-sponsorship.

Dated: December 22, 2009.

Penelope Slade-Sawyer,

RADM U.S. Public Health Service, Acting Executive Director, President's Council on Physical Fitness and Sports, U.S. Department of Health and Human Services.

[FR Doc. E9–30653 Filed 12–24–09; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)—[Extension]

Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act) ''Limitation on Prices of Drugs Purchased by Covered Entities.'' Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula. Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

In response to the statutory mandate of section 340B(a)(5)(C) to develop audit guidelines and because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA Office of Pharmacy Affairs (OPA) developed a dispute resolution process for manufacturers and covered entities as well as manufacturer guidelines for audit of covered entities.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Audits					
Audit Notification of Entity	2	1	2	4	8
Audit Work Plan	1	1	1	8	8
Audit Report	1	1	1	1	1
Entity Response	0	0	0	0	0
Dispute Resolution					
Dispute Resolution Request	2	4	8	10	80
Rebuttal	2	1	2	16	32
Record Keeping Requirement					
Dispute Records	10	1	10	.5	5
Total Recordkeeping	10				5

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: December 18, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–30606 Filed 12–24–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0600]

Draft Guidance for Industry on Tobacco Health Document Submission; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Tobacco Health Document Submission.'' The draft guidance is intended to assist persons making certain document submissions to FDA under the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by January 22, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Tobacco Health Document Submission'' to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance document may be sent.

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. Identify comments with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: May Nelson, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 240–276–1717, *May.Nelson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by, among other things, adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 904(a)(4) of the act, as amended by the Tobacco Control Act, requires each tobacco product manufacturer or importer, or agent thereof, to submit all documents developed after June 22, 2009, ''* * * that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.'' Information required under section 904(a)(4) of the act must be submitted to FDA beginning December 22, 2009. FDA recognizes the challenges associated with the collection, review, organization, and production of documents. We also recognize that additional time may be necessary for the production of documents in a digital format, which FDA strongly encourages in order to improve the management and accessibility of submitted documents. Therefore, FDA does not intend to enforce the December 22, 2009, deadline provided you submit by April 30, 2009, all documents described in section 904(a)(4) of the act developed between June 23, 2009, and March 31, 2010.

II. Significance of Guidance

FDA is issuing this draft guidance document consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on ''Tobacco Health Document Submission.'' 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 statute and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Paperwork Reduction Act of 1995

This draft guidance contains proposed collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). As required by the PRA, FDA has published an analysis of, among other information collections, the information collection concerning the submission of tobacco health documents (74 FR 45219, September 1, 2009, as corrected by 74 FR 47257, September 15, 2009) and will submit them for OMB approval.

V. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: December 22, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–30657 Filed 12–22–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Gastrointestinal, Liver and Pancreas Pathophysiology.

Date: January 12, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: GI Pathophysiology.

Date: January 15, 2010.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30642 Filed 12–24–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services; Award a Single Source Replacement Grant

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Notice to award a single source replacement grant.

CFDA No.: 93.710.

Amount of Award: $50,000.

Project Period: September 30, 2009 to September 29, 2010.

Legislative Authority: The legislative authority for this grant is provided in Section 674(b)(2) and 678A(a)(1)(A) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training and Educational Services (Coats Human Services Reauthorization Act of 1998) [Pub. L. 105–285].

SUMMARY: The Office of Community Services (OCS) awarded a single source replacement grant of $50,000 under the Community Services Block Grant (CSBG) Training and Technical Assistance and Capacity Building Program—Earned Income Tax Credit (EITC) and Other Asset Formation Opportunities program to Maryland Volunteer Lawyers Service (MVLS) in Baltimore, Maryland on September 30, 2007. On September 16, 2009, MVLS submitted a letter relinquishing their grant. Job Opportunities Task Force (JOTF) of Baltimore, Maryland, an eligible entity, submitted a letter and grant application on September 16, 2009, requesting approval as a single source replacement grantee for the CSBG EITC project as of September 30, 2009. The Administration for Children and Families (ACF) approved Job Opportunities Task Force as the permanent successor grantee for the award.

JOTF will continue to create strategic opportunities to connect workforce development programs with asset development programs, including statewide training standards for tax preparation and financial counseling training, during the third and final year of the project.

FOR FURTHER INFORMATION CONTACT: Danielle Williams, U.S. Department of Health and Human Services, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20047, *Telephone:* (202) 205–4717, *E-mail: Danielle.Williams@acf.hhs.gov.*

Dated: December 11, 2009.

Yolanda J. Butler,

Acting Director, Office of Community Services.

[FR Doc. E9–30644 Filed 12–24–09; 8:45 am]

BILLING CODE 4184–27–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 74 FR 52816, dated October 14, 2009) is amended to reflect the reorganization of the Centers for Disease Control and Prevention (CDC). This reorganization is being undertaken to strengthen CDC's response to H1N1 and other public health emergencies, establish systems to better identify and address leading causes of death and disability, and strengthen CDC's ability to support state and local action to improve health.

I. Under Part C, Section C–B, Organization and Functions, the following organizational units are deleted in their entirety:

- Coordinating Center for Environmental Health and Injury Prevention (CT)
  - National Center for Environmental Health (CTB)
  - National Center for Injury Prevention and Control (CTC)
- Coordinating Center for Health Information and Services (CP)
  - National Center for Health Marketing (CPB)
  - National Center for Health Statistics (CPC)
  - National Center for Public Health Informatics (CPE)
- Coordinating Center for Health Promotion (CU)
  - National Center on Birth Defects and Developmental Disabilities (CUB)
  - National Center for Chronic Disease Prevention and Health Promotion (CUC)
- Coordinating Center for Infectious Diseases (CV)
  - National Center for Immunization and Respiratory Diseases (CVG)
  - National Center for Zoonotic, Vector-Borne, and Enteric Diseases (CVH)
  - National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (CVJ)
  - National Center for Preparedness, Detection, and Control of Infectious Diseases (CVK)

II. Under Part C, Section C–B, Organization and Functions, make the following changes:

• Retitle all references to the Coordinating Office for Terrorism Preparedness and Emergency Response (CG) to the Office of Public Health Preparedness and Response (CG)

• Retitle all references to the Coordinating Center for Global Health (CW) to the Center for Global Health (CW)

III. Under Part C, Section C–B, Organization and Functions, insert the following:

• Office of State and Local Support (CQ): The Office of State and Local Support is headed by a Deputy Director and provides strategic support for programs and activities across CDC that impact state and local efforts.

• Office of Surveillance, Epidemiology, and Laboratory Services (CP): The Office of Surveillance, Epidemiology, and Laboratory Services is headed by a Deputy Director and provides strategic direction on program-specific surveillance, epidemiology, and laboratory activities to its components, which are as follows:

○ National Center for Health Statistics (CPC)

○ Offices of Surveillance, Epidemiology, Informatics, Laboratory Science, and Career Development (CPG)

• Office of Non-Communicable Diseases, Injury and Environmental Health (CU): The Office of Non-Communicable Diseases, Injury and Environmental Health is headed by a Deputy Director and provides strategic direction on non-communicable disease activities to its components, which are as follows:

○ National Center on Birth Defects and Developmental Disabilities (CUB)

○ National Center for Chronic Disease Prevention and Health Promotion (CUC)

○ National Center for Environmental Health (CUG)

○ National Center for Injury Prevention and Control (CUH)

• Office of Infectious Diseases (CV): The Office of Infectious Diseases is headed by a Deputy Director and provides strategic direction on infectious disease activities to its components which are as follows:

○ National Center for Immunization and Respiratory Diseases (CVG)

○ National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (CVJ)

○ National Center for Emerging and Zoonotic Infectious Diseases (CVL)

IV. Delegations of Authority: All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

Authority: 44 U.S.C. 3101.

Dated: December 17, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–30677 Filed 12–24–09; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0134]

Science and Technology Directorate; Submission for Review; Information Collection Request for the Department of Homeland Security Science and Technology Directorate First Responders Community of Practice

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on a new data collection form for the Science and Technology Directorate (S&T) First Responders Community of Practice (FRCoP): User Registration Page (DHS Form 10059 (9/09)). The FRCoP web-based tool will be collecting profile information from first responders and select authorized non-first responder users to facilitate networking and formation of online communities. All users will be required to authenticate prior to entering the site. In addition, the tool will provide members the capability to create wikis, discussion threads, blogs, and documents allowing them to enter and upload content in accordance with the site's Rules of Behavior. Members will also be able to participate in threaded discussions and comment on other member's content. The S&T FRCoP program is responsible for providing a collaborative environment for the first responder community to share information, best practices, and lessons learned. Section 313 of the Homeland Security Act of 2002 (Pub. L. 107–296) established this requirement. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L.104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until February 26, 2010.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer for the Department of Homeland Security, Science and Technology Directorate, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Please include docket number DHS–2009–0134 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Jeffery Harris (202) 254–6015.

SUPPLEMENTARY INFORMATION: The User Registration Form will be available on the FRCoP Web site found at [*http://www.firstresponder.gov/cop*]. The user will complete the form online and submit it through the Web site.

Overview of this Information Collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* First Responders Community of Practice: User Registration Form.

Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: DHS Science and Technology Directorate, DHS Form 10059 (09/09).

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individual first responders who wish to participate in the FRCoP.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 5000.

b. *An estimate of the time for an average respondent to respond:* 0.25 burden hours.

Dated: November 10, 2009.

Bradley I. Buswell,

Under Secretary for Science and Technology (Acting).

[FR Doc. E9–30640 Filed 12–24–09; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0024]

Enforcement Actions Summary

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of Availability.

SUMMARY: The Transportation Security Administration (TSA) is providing notice that it has issued an annual summary of all enforcement actions taken by TSA under the authority

granted in the Implementing Recommendations of the 9/11 Commission Act of 2007.

FOR FURTHER INFORMATION CONTACT: Sarah Tauber, Assistant Chief Counsel, Civil Enforcement, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–3964; facsimile (571) 227–1378; e-mail *sarah.tauber@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2007, section 1302(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the 9/11 Act), Public Law 110–53, 121 Stat. 392, gave TSA new authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code (U.S.C.) and for any violations of chapter 701 of title 46 of the U.S. Code, which governs transportation worker identification credentials.

Section 1302(a) of the 9/11 Act, codified at 49 U.S.C. 114(v), authorizes the Secretary of the Department of Homeland Security (DHS) to impose civil penalties of up to $10,000 per violation of any surface transportation requirement under 49 U.S.C. or any requirement related to transportation worker identification credentials (TWIC) under 46 U.S.C. chapter 701. TSA exercises this function under delegated authority from the Secretary. *See* DHS Delegation No. 7060–2.

Under 49 U.S.C. 114(v)(7)(A), TSA is required to provide the public with an annual summary of all enforcement actions taken by TSA under this subsection; and include in each such summary the identifying information of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty. This summary is current as of December 15, 2009. TSA will publish a summary of all enforcement actions taken under the statute in January 2010. In future years, TSA will publish the summary in January to cover the previous calendar year.

Document Availability

You can get an electronic copy of both this notice and the enforcement actions summary on the Internet by searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov,* Docket No. TSA–2009–0024;

You can get an electronic copy of only this notice on the Internet by—

(1) Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html;* or

(2) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Issued in Arlington, Virginia, December 18, 2009.

Margot F. Bester,

Principal Deputy Chief Counsel.

[FR Doc. E9–30623 Filed 12–24–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2009–N137; 30136–1265–0000–S3]

Kirtland's Warbler Wildlife Management Area, Located Throughout 8 Counties in the Northern Lower Peninsula of MI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) for Kirtland's Warbler Wildlife Management Area (Kirtland's Warbler WMA). Goals and objectives in the CCP describe how the agency intends to manage Kirtland's Warbler WMA for the next 15 years.

ADDRESSES: Copies of the Final CCP and FONSI/EA may be viewed at the Seney National Wildlife Refuge Headquarters or at public libraries near the Kirtland's Warbler WMA. You may access and download a copy via the Planning Web site at *http://www.fws.gov/midwest/Planning/kirtland* or you may obtain a copy on compact disk by contacting: U.S. Fish and Wildlife Service, Division of Conservation Planning, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 (1–800–247–1247, extension 5429), or Seney National Wildlife Refuge, 1674 Refuge Entrance Road, Seney, MI 49883 (906–586–9851). A limited number of hardcopies will be available for distribution at the Refuge Headquarters.

FOR FURTHER INFORMATION CONTACT: Greg McClellan, (906–586–9851).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we complete the CCP process for Kirtland's Warbler WMA, which began by publishing a notice of intent (71 FR 20722, April 21, 2006). For more information about the initial process, see that notice. We released the draft CCP and EA to the public, announcing and requesting comments in a notice of availability (74 FR 16887, April 13, 2009).

The U.S. Fish and Wildlife Service established the wildlife management area in the early 1980s due, in part, to the recommendations of the Kirtland's Warbler Recovery Team. The original goal was to acquire 7,500 acres of land on which habitat would be managed for the benefit of Kirtland's Warbler. At present, the area contains 124 separate tracts totaling 6,582 acres.

The Draft CCP/EA was released for public review April 3, 2009; the comment period lasted 42 days ending May 15, 2009. By the conclusion of the comment period we received 5 written responses from organizations and individuals. In response to these comments we made a number of minor edits to the final document.

Selected Alternative

After considering the comments received, we have selected Alternative 3 (Ecological Management and Land Ownership Consolidation) for implementation. Under the selected alternative we would seek to manage existing lands as suggested in Alternative 2, but would also explore land exchanges with the State (and possibly U.S. Forest Service) to consolidate State and WMA parcels. Proposed land exchanges would likely increase the total area of land managed for Kirtland's Warbler, as well as increase management efficiency by both federal and state agencies. Existing lands and any new lands acquired through exchange would be managed to benefit the Kirtland's Warbler and other native flora and fauna of jack pine ecosystems. However, the way jack pine stands would be managed would be shifted towards a more ecologically-based approach rather than the highly intensive manner of present habitat management that produces jack pine plantations. For instance, if consolidation would occur and the Service would obtain upland jack pine stands in the eastern Upper Peninsula,

prescribed fire would be a more likely management tool.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*), requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

We will review and update the CCP at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Dated: August 24, 2009.

Thomas O. Melius,

Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. E9–30645 Filed 12–24–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2009–N167; 30136–1265–0000–S3]

Muscatatuck National Wildlife Refuge: Jackson, Jennings, & Monroe Counties, IN

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability: Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) for Muscatatuck National Wildlife Refuge (NWR). Goals and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

ADDRESSES: Copies of the Final CCP and FONSI/EA may be viewed at the Muscatatuck National Wildlife Refuge Headquarters or at public libraries near the refuge. You may access and download a copy via the Planning Web site at *http://www.fws.gov/midwest/planning/muscatatuck,* or you may obtain a copy on compact disk by contacting: U.S. Fish and Wildlife Service, Division of Conservation Planning, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 (1–800–247–1247, extension 5429), or Muscatatuck National Wildlife Refuge, 12985 East U.S. Highway 50, Seymour, IN 47274 (812–522–4352). A limited number of hardcopies will be available for distribution at the Refuge Headquarters.

FOR FURTHER INFORMATION CONTACT: Marc Webber (812–522–4352).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we complete the CCP process for Muscatatuck NWR, which we began by publishing a notice of intent on (72 FR 27587). For more information about the initial process, see that notice. We released the draft CCP and EA to the public, announcing and requesting comments in a notice of availability on April 3, 2009 (74 FR 15297).

Muscatatuck NWR, located in southeastern Indiana, was established in 1966 under the Migratory Bird Conservation Act for the protection and production of migratory birds and other wildlife. The refuge is comprised of 7,802 acres, including the 78-acre Restle Unit approximately 45 miles to the northwest. The Refuge also administers nine Farm Service Agency conservation easements, totaling 130.5 acres. The 97-acre Seep Springs Research Natural Area preserves one of only seven acid seep springs documented in the state.

The Draft CCP and EA were officially released for public review on April 6, 2009; the comment period lasted 33 days until May 8, 2009. Planning information was sent to over 1,000 individuals and organizations for review, resulting in 40 written comment submissions with over 150 individual comments. During the comment period the Refuge also hosted an open house to receive public comments and feedback on the CCP and EA documents. Approximately 25 people attended this event. A number of minor changes were made to the documents in response to comments, and one new objective was added regarding landscape-level conservation.

Selected Alternative

After considering the comments received, we have selected Alternative C (Balance Natural Processes and Constructed Units; Increased Focus on High Quality Priority General Public Uses) for implementation. Under the selected alternative the Refuge will rely on a combination of active management and natural processes to provide quality wildlife habitat for over 80 species of Regional Conservation Priority, including 3 species listed as federally threatened or endangered. Habitat management will trend toward more historic landscape conditions by expanding forest habitat areas and decreasing management of constructed wetlands. Wildlife-dependant recreation opportunities, biological surveys and monitoring activities, and invasive plant management would all increase under the preferred alternative. Partnerships will play a key role in meeting larger-landscape conservation challenges such as habitat fragmentation and global climate change.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*), requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

We will review and update the CCP at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Dated: August 24, 2009.

Thomas O. Melius,

Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. E9–30647 Filed 12–24–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2009–N270; 30120–1113–0000–F6]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before January 27, 2010.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, MN 55111–4056; or by electronic mail to *permitsR3ES@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES**. When submitting comments, please refer to the appropriate permit application number.

Permit Applications

Permit Application Number: TE120259–1

Applicant: Missouri Department of Conservation, Chillicothe, Missouri.

The applicant requests a permit renewal to take (capture and release, temporarily hold for propagation) Pallid Sturgeon (*Scaphirhynchus albus*) in the Missouri River, including its tributaries, and the Upper Mississippi River within the State of Missouri, and the Kansas River within the State of Kansas. Activities will be conducted in conjunction with long-term population assessment and recovery work. Proposed activities are aimed at enhancement of the survival of the species in the wild.

Permit Application Number: TE151107

Applicant: Redwing Ecological Services, Louisville, Kentucky.

The applicant requests a permit renewal to take (capture and release) the following endangered bat species: Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*). The applicant seeks authority throughout the range of the species in Regions 2, 3, 4, and 5 of the Service. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE234121

Applicant: Western EcoSystems Technology, Inc., Cheyenne, Wyoming.

The applicant requests a permit to take (capture and release) Indiana bats, gray bats, Ozark big-eared bats, and Virginia big-eared bats throughout the range of the species, which includes Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Oklahoma, Ohio, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE120258

Applicant: Iowa Department of Natural Resources, Des Moines, Iowa.

The applicant requests a permit renewal to take (capture and release, collect voucher specimens) the Topeka shiner (*Notropis topeka*) throughout the State of Iowa to document species presence or absence. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE023666

Applicant: Eric R. Britzke, Clinton, Mississippi.

The applicant requests a permit renewal to take (capture and release) Indiana bats, gray bats, Virginia big-eared bats, Ozark big-eared bats, and Northern flying squirrels (*Glaucomys sabrinus*) throughout the range of the species in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE194099

Applicant: Michael A. Hoggarth, Westerville, Ohio.

The applicant requests a permit renewal to take (capture and release, capture and relocate) purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), fanshell (*Cyprogenia stegaria*), white cat's paw (*Epioblasma obliquata perobliqua*), pink mucket pearly mussel (*Lampsilis abrupta*), rayed bean (*Villosa fabalis*), sheepnose (*Plethobasus cyphyus*), and clubshell (*Pluerobema clava*) mussels throughout the State of Ohio. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE235639

Applicant: Jessica Hickey, P.I., Davey Resource Group, Kent, Ohio.

The applicant requests a permit renewal to take (capture and release) Indiana bats throughout Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE120231

Applicant: John C. Timpone, Ballwin, Missouri.

The applicant requests an amendment and renewal of his permit to take (capture and release) Indiana bats. The amendment seeks to add the gray bat to the species authorized as well as additional states for authorized activities. The applicant seeks authority in Illinois, Kentucky, Maryland, Missouri, New Hampshire, New York, Pennsylvania, Ohio, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE181256

Applicant: Lewis Environmental Consulting, LLC, Murray, Kentucky.

The applicant requests a permit renewal to take (capture and release) clubshell, Northern riffleshell (*Epioblasma torulosa rangiana*), orange-footed pimpleback pearlymussel (*Plethobasus cooperianus*), pink mucket pearlymussel, rough pigtoe (*Pleurobema plenum*), purple cat's paw pearlymussel, white cat's paw pearlymussel, fanshell, fat pocketbook (*Potamilus capax*), Higgins' eye pearlymussel (*Lampsilis higginsii*), winged mapleleaf (*Quadrula fragosa*), scaleshell (*Leptodea leptodon*), ring pink (*Obovaria retusa*), and white wartyback (*Plethobasus cicatricosus*) mussels throughout the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Illinois, Indiana, Iowa, Mississippi, Missouri, Ohio, Pennsylvania, Tennessee, West Virginia and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Dated: December 16, 2009.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. E9–30617 Filed 12–24–09; 8:45 am]

BILLING CODE 4310–55–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting and Hearing Notice No. 10–09]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and time	Subject matter
Tuesday, Jan. 12, 2010:	
10:30 a.m.	Issuance of Proposed Decisions in claims against Albania and Libya.
2 p.m.	Oral hearing on objections to Commission's Proposed Decision in: Claim of Estate of Mostafa F. Karim, Claim No. LIB–I–052.
Wednesday, Jan. 13, 2010:	
9 a.m.	Oral hearing on objections to Commission's Proposed Decision in: Claim of Richard Melhart, Claim No. LIB–I–005.
10 a.m.	Claim of David Jodice, Claim No. LIB–I–008.
11 a.m.	Claim of Salvatore Ferrigno, Claim No. LIB–I–044 and Claim of Francesco Zerilli, Claim No. LIB–I–049.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Jaleh F. Barrett,

Chief Counsel.

[FR Doc. E9–30828 Filed 12–23–09; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 18, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/E-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/*Fax:* 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below). The OMB is particularly interested in comments which:

- 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.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119).

OMB Control Number: 1218–0200.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 7,562.

Estimated Total Annual Burden Hours: 4,795,505.

Estimated Total Annual Costs Burden (excludes hourly wage costs): $0.

Description: The purpose of the collection of information requirements in the PSM Standard (29 CFR 1910.119) are to ensure that employers collect the information necessary to control and reduce injuries and fatalities in workplaces that have the potential for highly hazardous chemical catastrophes. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at Vol. 74 FR 46621 on September 10, 2009. PRA documentation prepared in association with the preclearance notice is available on *http://www.regulations.gov* under docket number OSHA–2009–0016.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–30637 Filed 12–24–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Genesis Poly Recycling/Mankato, Minnesota.

Principal Product/Purpose: The loan, guarantee, or grant application is to enable a new business venture to acquire the equipment needed to collect and convert agricultural plastics into pellets to be used in the manufacture of new products. The NAICS industry code for this enterprise is: 325991 Custom Compounding of Purchased Resins.

DATES: All interested parties may submit comments in writing no later than January 11, 2010. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC, this 18th day of December 2009.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. E9–30639 Filed 12–24–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Publication of Year 2009 Form M–1 With Electronic Filing Option, Notice

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice on the availability of the Year 2009 Form M–1 with electronic filing option.

SUMMARY: This document announces the availability of the Year 2009 Form M–1, Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception. It is substantively identical to the 2008 Form M–1. The Form M–1 may again be filed electronically over the Internet.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding the Form M–1 filing requirement, contact Amy J. Turner or Beth L. Baum, Office of Health Plan Standards and Compliance Assistance, at (202) 693–8335. For inquiries regarding how to obtain or file a Form M–1, see the Supplementary Information section below.

SUPPLEMENTARY INFORMATION:

I. Background

The Form M–1 is required to be filed under section 101(g) and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101–2.

II. The Year 2009 Form M–1

This document announces the availability of the Year 2009 Form M–1, Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception

(ECEs). This year's Form M–1 is substantively identical to the Year 2008 Form M–1. The electronic filing option has been retained and filers are encouraged to use this method. The Year 2009 Form M–1 is due March 1, 2009, with an extension until May 3, 2009 available.

The Employee Benefits Security Administration (EBSA) is committed to working together with administrators to help them comply with this filing requirement. Copies of the Form M–1 are available on the Internet at *http://www.dol.gov/ebsa/forms_requests.html.* In addition, after printing, copies will be available by calling the EBSA toll-free publication hotline at 1–866–444–EBSA (3272). Questions on completing the form are being directed to the EBSA help desk at (202) 693–8360. For questions regarding the electronic filing capability, contact the EBSA computer help desk at (202) 693–8600.

Statutory Authority: 29 U.S.C. 1021–1024, 1027, 1029–31, 1059, 1132, 1134, 1135, 1181–1183, 1181 note, 1185, 1185a–b, 1191, 1191a–c; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E9–30656 Filed 12–24–09; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Notice of Charter Renewal for Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Charter Renewal for Humanities Panel.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770), as amended, the National Endowment for the Humanities (NEH) gives notice that it will renew the charter for the Humanities Panel for two years from December 29, 2009 to December 29, 2011. The Chairman of NEH has determined that the renewal of the Humanities Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Chairman of NEH by the Federal Advisory Committee Act of 1972, 5 U.S.C. App. 3(2) (Pub. L. 92–463, 86 Stat. 770), as amended, and Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 959(a)(4), as amended.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Committee Management Officer, 1100 Pennsylvania Avenue, NW., Room 529, Washington, DC 20506. (*Phone:* (202) 606–8322, facsimile (202) 606–8600, or e-mail to *gencounsel@neh.gov*). Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the NEH's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The Humanities Panel is a Federal advisory committee under 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770). The purpose and objective of the Humanities Panel is to advise the National Council on the Humanities and the Chairman of the NEH concerning policies, programs, and procedures of NEH as requested. The Humanities Panel furthermore makes recommendations on applications for financial support submitted to NEH.

Members of the Humanities Panel are selected on the basis of their subject matter expertise in a humanities discipline or on the basis of their experience in a humanities institution, or both, in order to ensure that all applications are reviewed under the highest standards of excellence in the humanities. The NEH selects panelists from a broad range of humanities disciplines (including languages, literature, history, jurisprudence, philosophy, archaeology, comparative religion, ethics, and the history, criticism, and theory of the arts). Panelists also are selected from a wide range of humanities institutions (including colleges, universities, archives, libraries, museums and historical societies). By statute, the Humanities Panel is also required to have broad geographic and culturally diverse representation.

Dated: December 15, 2009.

Michael P. McDonald,

Committee Management Officer.

[FR Doc. E9–30717 Filed 12–24–09; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection.

DATES: Written comments should be received by February 26, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays.)

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance of the Science Resources Statistics Survey Improvement Projects.

OMB Approval Number: 3145–0174.

Expiration Date of Approval: February 28, 2010.

Abstract. Generic Clearance of the Science Resources Statistics Survey Improvement Projects. The National Science Foundation's Division of Science Resources Statistics (NSF/SRS) needs to collect timely data on constant changes in the science and technology sector and to provide the most complete and accurate information possible to policy makers in Congress and throughout government and academia. NSF/SRS conducts many surveys to obtain the data for these purposes. The Generic Clearance will be used to ensure that the highest quality data are obtained from these surveys. State-of-the-art methodology will be used to develop, evaluate, and test questionnaires and survey concepts as well as to improve survey methodology. This may include field or pilot tests of questions for future large-scale surveys, as needed.

Expected Respondents. The respondents will be from industry, academia, nonprofit organizations, members of the public, and State, local, and Federal governments. Respondents will be either individuals or institutions, depending upon the survey under investigation. Qualitative procedures will generally be conducted in person or over the phone, but quantitative procedures may be conducted using mail, Web, e-mail, or phone modes, depending on the topic

under investigation. Up to 16,660 respondents will be contacted across all survey improvement projects. No respondent will be contacted more than twice in one year under this generic clearance. Every effort will be made to use technology to limit the burden on respondents from small entities.

Both qualitative and quantitative methods will be used to improve NSF's current data collection instruments and processes and to reduce respondent burden, as well as to develop new surveys. Qualitative methods include, but are not limited to, expert review; exploratory, cognitive, and usability interviews; focus groups; and respondent debriefings. Cognitive and usability interviews may include the use of scenarios, paraphrasing, card sorts, vignette classifications, and rating tasks. Quantitative methods include, but are not limited to, telephone surveys, behavior coding, split panel tests, and field tests.

Use of the Information. The purpose of these studies is to use the latest and most appropriate methodology to improve NSF surveys. The data will be used internally to improve NSF surveys. Methodological findings may be presented externally in technical papers at conferences, published in the proceedings of conferences, or in journals. Improved NSF surveys will help policy makers in decisions on research and development funding, graduate education, and the scientific and technical workforce, as well as contributing to reduced survey costs.

Burden on the Public. NSF estimates that a total reporting and recordkeeping burden of 14,950 hours will result from activities to improve its surveys. The calculation is shown in Table 1:

TABLE 1—ANTICIPATED SURVEYS TO UNDERTAKE IMPROVEMENT PROJECTS, ALONG WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS PER SURVEY FOR THREE YEAR PERIOD

Survey name	Number of respondents [1]	Hours
Graduate Student Survey	[2] 1,500	2,500
SESTAT Surveys	10,000	5,000
Postdoc Project	2,000	2,500
New and Redesigned R&D Surveys.		
Higher Education R&D	400	1,200
Government R&D	60	180
Nonprofit R&D	100	300
Business R&D	50	150
Microbusiness R&D	150	450
Survey of Scientific & Engineering Facilities	300	300
Public Understanding of S&E Surveys	200	50
Survey of Earned Doctorates	700	450
Additional surveys not specified	1,200	1,200
Total	16,660	14,280

[1] Number of respondents listed for any individual survey may represent several methodological improvement projects.
[2] This number refers to the science, engineering, and health-related departments within the academic institutions of the United States (not the academic institutions themselves).

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 22, 2009.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–30636 Filed 12–24–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26; NRC–2009–0569]

Notice of Docketing of Amendment Request for Material License SNM–2511; Pacific Gas and Electric Company; Diablo Canyon Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Docketing of Amendment Request for Materials License SNM–2511.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* (301) 492–3325; *fax number:* (301) 492–3348; *e-mail: john.goshen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering an application dated April 7, 2008, from Pacific Gas and Electric Company (PG&E) to amend its Special Nuclear Material License No. SNM–2511, under the provisions of 10 CFR Part 72, for the receipt, possession, storage and transfer of spent fuel, reactor-related Greater than Class C waste and other radioactive materials associated with spent fuel storage at the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI), located at the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 site in San Luis Obispo County, California. If granted, the amendment will revise the technical specifications (TS) as follows:

1. Revise TS 3.1.1, ''Multi-Purpose Canister (MPC),'' to clarify the required helium leak rate condition and the leak rate testing requirements;

2. Delete TS 3.1.4, ''Spent Fuel Storage Cask (SFSC) Time Limitation in Cask Transfer Facility (CTF),'' based on analysis of the thermal performance of the Holtec HI–STORM 100 system which shows there is no need for a required time limitation in the CTF;

3. Revise TS 3.2.1, ''Dissolved Boron Concentration,'' to modify the dissolved boron concentrations required for MPC–32 canisters and, to allow linear interpolation for some enrichments consistent with the Holtec International (Holtec) Certificate of Compliance (CoC) No. 1014, Amendment 3, for the HI–STORM 100 system;

4. Add a note to both surveillance requirements of TS 3.2.1 to limit the monitoring requirement consistent with the Holtec CoC No. 1014, Amendment 1, for the HI–STORM 100 system;

5. Revise TS 4.1.1.a, b, and c, ''Design Features Significant to Safety,'' to allow use of Metamic Boron-10 as a neutron absorber for each of the specified MPC consistent with Holtec CoC No.1014, Amendment 2, for the HI–STORM 100 system, and add TS 4.1.2, ''Design Features Important to Criticality Control,'' to define the material and testing requirements for the use of Metamic;

6. Change the title of TS 4.3.4.a, ''Permanent Load Handling Equipment,'' to ''Weldment and Reinforced Concrete,'' which more correctly reflect the subject of the TS subparagraphs;

7. Revise TS 4.3.4.b, ''Mobile Load Handling Equipment,'' to replace the term ''permanent load handling equipment'' with the term ''the cask transporter,'' as the transporter is not considered a mobile load handling equipment within the context of TS 4.3.4.b; and

8. Revise item b of TS 5.1.3, ''MPC and SFSC Loading, Unloading, and Preparation Program,'' to clarify the maintenance of the required conditions in the annular gap between the MPC and the transfer cask depending on which drying process is used and fuel heat load during MPC loading or unloading operations.

This application was docketed under 10 CFR 72.16; the ISFSI Docket No. is 72–26 and will remain the same for this action. The NRC inadvertently failed to promptly publish this notice of docketing in the **Federal Register** after the NRC's receipt of the PG&E April 7, 2008, license amendment request. All other procedural requirements in Part 72 will be met as the NRC continues to process this license amendment request (*see* section II of this notice, ''Opportunity to Request a Hearing'').

The Commission will approve the license amendment if it determines that the application meets the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations, and pursuant to 10 CFR 72.58, the findings required by 10 CFR 72.40. These findings will be documented in a Safety Evaluation Report.

II. Opportunity To Request a Hearing

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is ML081070073. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 15th day of December 2009.

For The Nuclear Regulatory Commission.

John Goshen, P.E.,

Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E9–30618 Filed 12–24–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362, NRC–2009–0570]

Southern California Edison: San Onofre Nuclear Generating Station, Unit 2 and Unit 3 Temporary Exemption

1.0 Background

Southern California Edison (SCE, the licensee) is the holder of the Facility Operating License Nos. NPF–10 and NPF–15, which authorize operation of the San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS 2 and 3), respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors (PWRs) located in San Diego County, California.

2.0 Request/Action

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.12, ''Specific exemptions,'' SCE has, by letter dated January 30, 2009, as supplemented by letters dated March 16 and September 29, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML090360738, ML090780251, and ML092740310, respectively), requested a temporary exemption from 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' and Appendix K to 10 CFR 50, ''ECCS [emergency core cooling system] Evaluation Models'' (Appendix K). The regulation in 10 CFR 50.46 contains acceptance criteria for the ECCS for light-water nuclear power reactors fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO™ cladding. In addition, Appendix K to 10 CFR Part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction in the development and application of an acceptable ECCS model. The temporary exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations require the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, SCE needs an exemption from the requirements of 10 CFR 50.46, and Appendix K in order to use (irradiate) lead fuel assemblies (LFAs) with a different cladding material, M5 alloy, at

SONGS 2 and 3. The scope of the staff's review of this temporary exemption request is limited to the current burnup limits (*i.e.,* 60 gigawatt-days per metric ton of uranium (GWD/MTU)). Extending the burnup of these LFAs above 60 GWD/MTU will require further NRC staff review and is beyond the scope of this exemption request.

The temporary exemption requested by the licensee would allow up to 16 LFAs with M5 alloy cladding manufactured by AREVA NP to be inserted into the SONGS 2 reactor core or the SONGS 3 reactor core. Currently, eight AREVA NP LFAs are scheduled for loading into the SONGS 2 reactor core for Cycle 16. The exemption would allow the LFAs to be used for up to three operating cycles (Cycles 16, 17, and 18). The use of M5 alloy LFAs will allow SCE to evaluate cladding performance for future fuel assemblies that need to be of a more robust design than the current fuel assemblies, to allow for possible higher duty or extended burnup.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This temporary exemption would allow the licensee to use a limited number of M5 alloy LFAs to evaluate cladding performance for the design of future fuel assemblies, which may need to be more robust than current fuel assemblies, to account for possible higher duty or extended burnup conditions. The regulations specify standards and acceptance criteria only for fuel rods clad with zircaloy or ZIRLO™. Thus, a temporary exemption is required to allow the licensee to use fuel rods clad with an advanced alloy that is not zircaloy or ZIRLO™. As stated above, 10 CFR 50.12 explicitly authorizes the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed temporary exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

In regard to the fuel mechanical design, the temporary exemption request for SONGS 2 and 3 relates solely to the types of cladding material specified in the regulations. No new or altered design limits for purposes of 10 CFR 50, Appendix A, General Design Criterion 10, ''Reactor Design,'' need to be applied or are required for the licensee's LFA program. In its exemption request, SCE committed to perform additional analyses of the LFAs to verify LFA performance and compatibility with existing fuel assemblies. These analyses will use approved methods, in compliance with the existing Technical Specifications (TS) and consistent with the Updated Final Safety Analysis Report (UFSAR) for SONGS 2 and 3, and will address the core physics, core thermal hydraulics, fuel thermal-mechanical design, and other safety analysis aspects of the LFAs. The LFAs will be placed in non-limiting core locations, in accordance with TS 4.2.1, ''Fuel Assemblies,'' where the peak integrated radial power peaking factor in the LFAs will be 0.95 or less of the core maximum integrated radial power peaking factor at all times in life. SCE further committed to perform poolside examinations of the LFAs after each cycle of operation to evaluate their performance and acceptability for continued use.

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. The staff's review and approval of topical report BAW–10227P–A, ''Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel,'' dated February 4, 2000 (ADAMS Accession Nos. ML003681479 and ML003681490), addressed all of the important aspects of M5 cladding with respect to ECCS performance requirements: (1) Applicability of 10 CFR 50.46(b) fuel acceptance criteria, (2) M5 material properties including fuel rod ballooning and rupture strains, and (3) steam oxidation kinetics and applicability of the Baker-Just weight gain correlation. A subsequent NRC-approved topical report, BAW–10240P–A, ''Incorporation of M5 Properties in Framatome ANP Approved Methods,'' dated May 5, 2004 (ADAMS Accession No. ML041260560), further addressed M5 material properties with respect to loss-of-coolant accident (LOCA) applications.

Based on an ongoing LOCA research program at Argonne National Laboratory (ANL), and NRC Research Information Letter 0801, ''Technical Basis for Revision of Embrittlement Criteria in 10 CFR 50.46,'' dated May 30, 2008 (ADAMS Accession No. ML081350225), cladding corrosion (and associated hydrogen pickup) has a significant impact on post-quench ductility. Pre-test characterization of irradiated M5 fuel cladding segments at ANL provides further evidence of favorable corrosion and hydrogen pickup characteristics of M5 as compared with standard Zircaloy-4. Hence, the M5 fuel rods would be less susceptible to the detrimental effects of hydrogen uptake during normal operation and their impact on post-quench ductility. Furthermore, ANL post-quench ductility tests on un-irradiated and irradiated M5 cladding segments demonstrate that the 10 CFR 50.46(b) fuel criteria (*i.e.,* 2200 degrees Fahrenheit and 17 percent equivalent cladding reacted) remain conservative up to current burnup limits.

Information provided in the NRC-approved M5 alloy topical reports, as well as recent ANL LOCA research, demonstrates that the acceptance criteria within 10 CFR 50.46 remain valid for M5 alloy cladding, and thus, the underlying purpose of the rule—to maintain a degree of post-quench ductility in the fuel cladding material—is met.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy release, hydrogen generation, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the LFA cladding for determining acceptable fuel performance. Metal-water reaction tests performed on M5 alloy material by AREVA NP (as discussed in topical report BAW–10227P–A) demonstrate conservative reaction rates relative to the Baker-Just equation. Thus, strict application of Appendix K, Paragraph I.A.5 is not necessary to achieve the underlying purpose of the rule in these circumstances, as acceptable performance of the LFAs can be demonstrated.

In addition, SCE states that the LFAs will be placed in non-limiting core locations, which provides further margin to ECCS performance requirements and ensures that the behavior of the LFAs is bounded by the safety analyses performed for the standard fuel rods. Based upon the results of metal-water reaction testing

and mechanical testing, which demonstrate that the 10 CFR 50.46 acceptance criteria and 10 CFR 50 Appendix K methods can be applied to the M5 alloy material, and the planned placement of the LFAs in non-limiting core locations, the NRC staff finds it acceptable to grant a temporary exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 for the use of up to 16 AREVA NP LFAs within SONGS 2 and 3.

Based on the above, no new accident precursors are created by allowing the use of the LFAs with M5 cladding material in the SONGS 2 and/or SONGS 3 reactor cores during operating Cycles 16, 17, and 18; therefore, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety in granting this temporary exemption.

Consistent With Common Defense and Security

The temporary exemption would allow up to 16 LFAs, with advanced M5 alloy cladding material, to be inserted into the SONGS 2 reactor core or potentially into the SONGS 3 reactor core. Currently, eight AREVA NP LFAs are scheduled to be loaded into the SONGS 2 core for Cycle 16, to be used for up to three operating cycles (Cycles 16, 17, and 18). This change to the reactor core configuration does not affect any existing or planned security measures. Therefore, the common defense and security is not impacted by this temporary exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish acceptance criteria for ECCS performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to the M5 advanced cladding alloy, even though the evaluations discussed above show that the intent of the regulations is met. Therefore, since the underlying purposes of 10 CFR 50.46 and Appendix K are achieved with the use of the M5 advanced cladding alloy, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for granting of an exemption exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the temporary exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SCE temporary exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 to allow up to 16 LFAs clad with M5 alloy and manufactured by AREVA NP, to be inserted into the SONGS 2 reactor core or the SONGS 3 reactor core, in non-limiting core locations, for use for up to three operating cycles (Cycles 16, 17, and 18 for the respective units).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this temporary exemption will not have a significant effect on the quality of the human environment (74 FR 51339; October 6, 2009). This temporary exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of December 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–30674 Filed 12–24–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61197; File No. SR–BX–2009–081]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule 1160 to Reflect the Availability of the FINRA Contact System to NASDAQ OMX BX Members That Are Not Also Members of FINRA

December 17, 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 December 9, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'' or ''BX'') 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 Exchange. BX has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) 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 change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX submits this proposed rule change to Rule 1160 to extend the availability of the FINRA Contact System to BX members that are not also members of FINRA.

The text of the proposed rule change is below. Proposed new language is in italics and proposed deletions are in brackets.

1160. Contact Information Requirements

(a) Each member shall report to the Exchange all contact information required by the Exchange via the *FINRA* [NASD] Contact System [(in the case of Exchange members that are FINRA members) or via electronic mail or paper mail (in the case of Exchange members that are not FINRA members)].

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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

BX is proposing to update Rule 1160 to reflect the availability of the FINRA Contact System (''System'') to BX members that are not also members of FINRA, and to make a technical change to the name of the System. The System maintains contact information records required by both BX and NASD Rules 1120, 1150, 3011, and 3520. Both BX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

and FINRA use this information for regulatory communications, and compliance purposes, among other things. The information is provided to FINRA as part of the membership application. If the applicant is approved for membership, the new member is provided access to the System and is responsible for entering the required information into the System as well as keeping it current thereafter. Historically, FINRA permitted access to the System only to members of FINRA. A BX member that was already a member of FINRA could access the System to fulfill its ongoing obligation to keep the required information current; however, BX members that were not also members of FINRA were not permitted access to the System. As a consequence, such firms could only fulfill their obligation to keep the required information current by submitting the information to BX via e-mail or paper mail.

FINRA recently made changes to the System so that BX-only members may also access the System, thus eliminating the need for the existing methods of providing such information. BX believes that having a central electronic location for this information is superior to the paper and e-mail-based methods of warehousing the information. BX will have access to the information maintained in the System for BX-only members in the same way as it has historically had with respect to BX members that are also members of FINRA. As such, BX is proposing to eliminate the language from Rule 1160 that requires BX-only members to provide required information by means other than the System. BX is also proposing to update the rule to reflect the new name of the System adopted by FINRA.[5]

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general and with Sections 6(b)(5) of the Act,[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these provisions in that it will make available to all BX members an efficient means by which they may provide information required by Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

Normally, a proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BX has requested that the Commission waive the 30-day operative delay. In its filing, BX noted that the proposal would provide a means for firms to comply with regulatory requirements more easily and quickly, and that keeping such information in a centralized, electronic location would enhance BX's and FINRA's oversight of these members.

The Commission believes that waiver of the 30-day operative period is consistent with the protection of investors and the public interest. The proposed rule change would allow contact information, utilized for regulatory communications and compliance purposes, among other things, to be more efficiently collected in a centralized location. In addition, the modification of the rule to reflect the new name of the System will add clarity to BX's rules. Finally, the Commission notes that it recently published and waived the 30-day pre-operative delay for a substantially similar proposal submitted by Nasdaq which was filed for immediate effectiveness.[11] Accordingly, the Commission designates the proposal to be effective upon filing with the Commission.[12]

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–2009–081 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–2009–081. 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

[5] *http://www.finra.org/Industry/Compliance/RegulatoryFilings/FCS/P005662.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that BX has satisfied the five-day pre-filing notice requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See* Securities Exchange Act Release No. 61151 (December 10, 2009) (SR–NASDAQ–2009–109).

[12] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–081 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30595 Filed 12–24–09; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61177; File No. SR–NYSE–2009–105]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Relating to the Designation of NYSE Arca, Inc., as the NYSE's Alternative Trading Facility in an Emergency

December 16, 2009.

I. Introduction

On October 13, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to adopt NYSE Rule 49, ''Emergency Powers,'' to allow a qualified NYSE officer to designate the NYSE's corporate affiliate, NYSE Arca, Inc. (''NYSE Arca'') to receive and process bids and offers in NYSE-listed securities and to execute orders in NYSE-listed securities on behalf of the NYSE in the event that an emergency condition prevents the NYSE from operating normally.[3] The proposed rule change was published for comment in the **Federal Register** on November 12, 2009.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYSE proposes to adopt NYSE Rule 49 to provide a qualified NYSE officer with the authority to declare an emergency condition with respect to trading on or through the systems and facilities of the NYSE.[5] An emergency condition will not be declared under NYSE Rule 49 unless: (i) There exists a regional or national emergency that would prevent the NYSE from operating normally; and (ii) such declaration is necessary so that the securities markets in general, and the NYSE's systems and facilities, including the Trading Floor, in particular, may continue to operate in a manner consistent with the protection of investors and in pursuit of the public interest.[6] For purposes of NYSE Rule 49, an ''emergency'' is an emergency as defined in Section 12(k)(7) of the Act,[7] and the NYSE's authority under NYSE Rule 49 is intended to be invoked only in the event of such an emergency.[8] The NYSE will make reasonable efforts to contact the Commission prior to taking action under NYSE Rule 49.[9]

In the event that an emergency condition is declared with respect to trading on or through the NYSE's systems and facilities, the NYSE may designate its corporate affiliate, NYSE Arca, to receive and process bids and offers in NYSE-listed securities and to execute orders in NYSE-listed securities on behalf of the NYSE.[10] Thus, the NYSE would use NYSE Arca as the execution engine for NYSE trades and would ensure that these trades are executed in compliance with Regulation NMS under the Act.[11] Under NYSE Rule 49, quotes or orders for NYSE-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be reported to the Consolidated Quotation System or the Consolidated Tape as quotations or executions, respectively, made on or through the systems and facilities of the NYSE.[12] Bids and offers entered pursuant to NYSE Rule 49 would be deemed to be bids and offers of the NYSE.[13]

NYSE members and Sponsored Participants would be permitted to enter quotations and to execute orders on or through the systems and facilities of NYSE Arca regardless of whether they were members or sponsored participants of NYSE Arca when the emergency condition was declared.[14] NYSE members registered as Designated Market Makers (''DMMs'') that are designated as temporary members of NYSE Arca in accordance with the NYSE Arca Equities Rules (''NYSE Arca Rules'')[15] would not be considered DMMs for the duration of the designation, but would be considered ''Market Makers'' pursuant to NYSE Arca Rules for the purpose of trading Exchange-listed securities on and through the systems and facilities of NYSE Arca.[16]

All trades in Exchange-listed securities entered or executed on or through the systems and facilities of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission today is approving a companion proposal by NYSE Arca that allows NYSE Arca to serve as the NYSE's alternative trading facility in the event of an emergency condition. *See* Securities Exchange Act Release No. 61178 (order approving File No. SR–NYSE Arca–2009–90) (''NYSE Arca Order'').

[4] *See* Securities Exchange Act Release No. 60922 (November 3, 2009), 74 FR 58341 (''Notice'').

[5] For purposes of NYSE Rule 49, a ''qualified Exchange officer'' is the NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation, Inc. Chief Executive Officer or his or her designee. If these individuals are unable to act due to incapacitation, the most senior surviving officer of NYSE Euronext or NYSE Regulation, Inc. will be a ''qualified Exchange officer'' for purposes of NYSE Rule 49. *See* NYSE Rule 49(a)(3)(ii).

[6] *See* NYSE Rule 49(a)(2).

[7] 15 U.S.C. 78*l*(k)(7).

[8] *See* NYSE Rule 49(a)(3)(i) and Notice, *supra* note 4, at note 5 and accompanying text.

[9] *See* NYSE Rule 49(c)(1).

[10] *See* NYSE Rule 49(b)(1).

[11] *See* Notice, *supra* note 4, at note 9.

[12] *See* NYSE Rule 49(b)(2)(ii). Accordingly, for the duration of the emergency condition, trades in NYSE-listed securities would print as ''N'' trades on the Consolidated Tape and quotes would be designated as NYSE quotes in the Consolidated Quotation System, notwithstanding the fact that they were processed on or through the systems and facilities of NYSE Arca. *See* Notice, *supra* note 4, at note 14 and accompanying text.

[13] *See* NYSE Rule 49(b)(3)(i).

[14] *See* NYSE Rule 49(b)(3)(i)(A). As described in greater detail in the Notice, *supra* note 4, NYSE Arca will provide temporary membership and/or access to NYSE members and Sponsored Participants that are not already NYSE Arca members or sponsored participants when the emergency condition is declared. Similarly, the NYSE may designate NYSE Arca members that are not members of the NYSE at the time the emergency condition is declared as temporary members of the NYSE, and may authorize temporary access for sponsored participants of NYSE Arca that do not have sponsored access to the NYSE. The temporary memberships or access will be valid only until regular trading resumes on the NYSE's systems and facilities. *See* NYSE Rule 49(b)(3)(ii) and (iii).

[15] *See* NYSE Arca Rule 2.100(b)(3)(i)(C) (approved in the NYSE Arca Order, *supra* note 3).

[16] *See* NYSE Rule 49(b)(3)(i)(B). According to the NYSE, NYSE Arca is not able to support DMMs operating in the same manner as they operate on the NYSE because of differences between the systems of the NYSE and NYSE Arca. The NYSE notes that DMMs will not have access to orders on the NYSE Arca system different from that of other market participants. DMMs designated as Market Makers under the NYSE Arca Rules will be obligated to meet the requirements of those rules. *See* Notice, *supra* note 4, at note 13 and accompanying text.

NYSE Arca would be subject to NYSE Arca Rules governing trading, and such rules would be considered NYSE rules for the purposes of such transactions, except that: (1) NYSE rules governing member firm conduct, including membership requirements and net capital requirements, will continue to apply to NYSE members and Sponsored Participants; and (2) NYSE listing requirements for all listed securities will continue to apply.[17]

NYSE Arca would conduct surveillance of trading in NYSE-listed securities on or through the systems and facilities of NYSE Arca on behalf of the NYSE.[18] NYSE members would remain subject to the NYSE's jurisdiction for any disciplinary action related to the trading of NYSE-listed securities on or through the facilities of NYSE Arca.[19]

The authority granted pursuant to NYSE Rule 49 would remain operative for up to 10 calendar days from the date the NYSE invokes such authority, and the NYSE may terminate actions taken pursuant to the rule at any time.[20] The NYSE may request an extension of this initial 10-day period for a specified amount of time by filing a proposed rule change with the Commission pursuant to Section 19(b)(2) of the Act, and the Commission must approve the NYSE's proposal before any such extension could take effect.[21]

III. Discussion and Commission Findings

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.[22] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] which requires, in part, that the rules of a national securities exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Commission believes that the proposal is reasonably designed to permit the NYSE to continue to operate in the event of an emergency, as defined in Section 12(k)(7) of the Act, by allowing the NYSE to designate its corporate affiliate, NYSE Arca, to receive and process quotations in NYSE-listed securities and to execute orders in NYSE-listed securities on behalf of the NYSE in the event of such an emergency.[24] The NYSE would invoke its authority under NYSE Rule 49 only in an emergency, as defined in Section 12(k)(7) of the Act.[25] The NYSE will make reasonable efforts to consult with the Commission prior to taking action under NYSE Rule 49.[26] Any action taken under NYSE Rule 49 would be operative for up to 10 calendar days from the date that the NYSE invokes its authority under the rule, and the NYSE may terminate action taken under the rule at any time.[27] To extend an action taken pursuant to NYSE Rule 49 beyond the initial 10-calendar day period, the NYSE must file a proposed rule change with the Commission pursuant to Section 19(b)(2) under the Act, and the Commission would need to approve such an extension before it could take effect.[28] In addition, the Commission could, at any time, exercise its authority under Section 12(k)(2) of the Act[29] to terminate an action taken by the NYSE under NYSE Rule 49.

NYSE Rule 49 also addresses surveillance and the disciplinary procedures that would apply in the event that NYSE Arca serves as the NYSE's alternative trading facility, as provided in the rule. In particular, NYSE Arca would conduct surveillance of trading in Exchange-listed securities on behalf of the NYSE.[30] NYSE members and member organizations would remain subject to the NYSE's jurisdiction for any disciplinary actions related to the trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca, and violations of NYSE Arca's rules would be referred to the NYSE for prosecution according to the NYSE's disciplinary rules.[31]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (File No. SR–NYSE–2009–105) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30596 Filed 12–24–09; 8:45 am]

BILLING CODE 8011–01–P

[17] *See* NYSE Rule 49(b)(4).

[18] *See* NYSE Rule 49(b)(5)(i).

[19] *See* NYSE Rule 49(b)(5)(ii).

[20] *See* NYSE Rule 49(c)(2) and (3). The NYSE will provide adequate prior notice to members, Sponsored Participants, and investors regarding its intention to terminate any action taken under the rule. *See* NYSE Rule 49(c)(3).

[21] *Id.*

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] The Commission previously has approved proposals by other national securities exchanges to establish back-up trading arrangements. *See, e.g.,* Securities Exchange Act Release Nos. 51717 (May 19, 2005), 70 FR 30160 (May 25, 2005) (File No. SR–CBOE–2004–59) (approving proposal by the Chicago Board Options Exchange, Incorporated to enter into back-up trading arrangements with other exchanges); 51926 (June 27, 2005), 70 FR 38232 (July 1, 2005) (File No. SR–Phlx–2004–65) (approving proposal by the Philadelphia Stock Exchange (''Phlx'') to enter into back-up trading arrangements with other exchanges); 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (File No. SR–Phlx–98–25) (approving the trading of Dell options listed on the Phlx at the American Stock Exchange on a temporary basis); and 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989) (File Nos. SR–Amex–89–26; CBOE–89–21; PSE–89–28; and Phlx–89–52) (approving proposals to trade options listed on the Pacific Stock Exchange on other exchanges following an earthquake).

[25] *See* NYSE Rule 49(a)(1) and (3). *See also* note 8, *supra,* and accompanying text.

[26] *See* NYSE Rule 49(c)(1).

[27] *See* NYSE Rule 49(c)(2) and (3). The NYSE will provide adequate prior notice to members, Sponsored Participants, and investors of its intention to terminate any action taken pursuant to NYSE Rule 49. *See* NYSE Rule 49(c).

[28] *See* NYSE Rule 49(c)(2).

[29] 15 U.S.C. 78*l*(k)(2).

[30] *See* NYSE Rule 49(b)(5)(i).

[31] *See* NYSE Rule 49(b)(5)(ii).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61204; File No. SR–BX–2009–079]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IM–1002–1 To Reflect Changes to a Corresponding FINRA Rule

December 18, 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 December 3, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'' or ''BX'') 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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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 the [sic] Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend BX IM–1002–1 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority (''FINRA''). The Exchange will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX based much of its rules on those of The NASDAQ Stock Market LLC (''NASDAQ''). Similarly, many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers (''NASD'')). As a consequence, many of BX's rules closely mirror those of FINRA. During 2008, FINRA embarked on an extended process of moving rules formerly designated as ''NASD Rules'' into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX also has initiated a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it is not possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses BX IM–1002–1, which prohibits members and associated persons from filing with BX misleading information relating to membership or registration, and which formerly corresponded to NASD IM–1000–1. In SR–FINRA–2009–009,[4] FINRA redesignated that rule as FINRA Rule 1122 and made amendments to clarify and simplify the rule. NASD IM–1000–1 provided that the filing of membership or registration information as a Registered Representative with FINRA which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and may be subject to disciplinary action.

FINRA's rule change clarified the rule's applicability to members and persons associated with members by specifying that ''no member or person associated with a member'' shall file incomplete or misleading membership or registration information. FINRA also eliminated the reference to the filing of registration information ''as a Registered Representative'' to clarify that the rule applies to the filing of registration information regarding any category of registration. In addition, FINRA deleted the reference that the prohibited conduct may be deemed inconsistent with just and equitable principles of trade and subject to disciplinary action as unnecessary and to better reflect the adoption of the NASD IM as a stand-alone FINRA rule. Likewise, BX is proposing to make changes to the text of IM–1002–1 that virtually mirror the changes made by FINRA to NASD IM–1000–1 so that the rules remain consistent for regulatory purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections [sic] 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform BX IM–1002–1 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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, as amended.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

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

[4] Securities Exchange Act Release No. 59789 (April 20, 2009), 74 FR 18767 (April 24, 2009) (SR–FINRA–2009–009).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

No. SR–BX–2009–079 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 No. SR–BX–2009–079. 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,[9] 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 BX. 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–BX–2009–079 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30599 Filed 12–24–09; 8:45 am]

BILLING CODE 8011–01–P

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61202; File No. SR–Phlx–2009–103]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify Certain Provisions of the Options Listing Procedures Plan Into Phlx's Rules

December 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 7, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend its Rule 1012 (Series of Options Open for Trading) by adding Commentary .10 to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange. The Exchange is also amending Options Floor Procedure Advice F–22 (Intra-Day Addition of Strike Prices) (''OFPA'' or ''Advice'') to add a cross-reference to Commentary .10 to Rule 1012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to implement in Phlx rules, specifically Commentary .10 to Rule 1012, changes that were recently made to the Plan for the Purpose of Developing and Implementing Procedures Designated to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934, also known as the Options Listing Procedures Plan (''OLPP''), in Amendment No. 3 thereto.[3]; and to cross-reference Commentary .10 to Rule 1012 in OFPA F–22. The proposed rule change in Commentary .10 incorporates uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, as a quote mitigation strategy intended to reduce the overall number of option series available for trading, which will in turn lessen the rate of increase in quote traffic (''range limitations'' or ''range limitation strategy'').[4]

Rule 1012 currently indicates what series of option contracts may be open for trading after a particular class of options has been approved for trading on the Exchange. This proposal adds Commentary .10 to Rule 1012 that applies certain ''range limitations'' to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009)(order approving Amendment No. 3 to the OLPP, which would apply uniform objective standards to the range of options series exercise or strike prices available for trading on exchanges that are sponsors of OLPP). The sponsors of OLPP include Phlx, Chicago Board Options Exchange, Incorporated; International Stock Exchange LLC; NASDAQ OMX BX, Inc.; The NASDAQ Stock Market LLC; NYSE Amex, LLC; and NYSE Arca, Inc. (together known as the ''Plan Sponsor Exchanges''). The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series and replaces and supersedes the Joint-Exchange Options Plan (''JEOP''). *See* Securities Exchange Act Release No. 44521 (July 6, 2009), 66 FR 36809 (July 13, 2001)(order approving OLPP). *See also* Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48954 (September 25, 1991)(order approving JEOP).

[4] The Exchange expects that other Plan Sponsor Exchanges will file similar rule change proposals implementing range limitations in their rules to mitigate quotes. *See, for example,* Securities Exchange Act Release No. 60995 (November 13, 2009), 74 FR 60008 (November 19, 2009)(SR–CBOE–2009–084)(notice of filing and immediate effectiveness).

the addition of new series for options classes overlying equity securities, Exchange Traded Fund Shares (''ETFs''), or Trust Issued Receipts (''TIRs'').

As proposed in Commentary .10, if the price of the underlying security is less than or equal to $20, the Exchange would not list new option series with an exercise price more than 100 percent above or below the price of the underlying security.[5] If the price of the underlying security is greater than $20, the Exchange would not list new option series with an exercise price more than 50 percent above or below the price of the underlying security. The proposal provides for an objective basis upon which the underlying prices for the price range limitations described above shall be determined, specifically in regard to intra-day add-on series and next-day series additions, new expiration months and for option series to be added as a result of pre-market trading.

The proposal also allows the Exchange to designate up to five underlying securities to which, instead of the aforementioned 50 percent restriction, a 100 percent restriction would apply. These designations would be made on an annual basis and cannot be removed during the calendar year unless the option class is delisted by the Exchange, in which case the Exchange may designate another class to replace the delisted class. If a designated class is delisted by the Exchange but continues to trade on at least one other exchange, any additional series for the class which are added from that point forward would again be subject to the proposed exercise price range limitations, unless the class is subsequently designated by another exchange. The proposal also provides a procedure for the Exchange to request, if conditions warrant, additional case-by-case exceptions even when it has already so designated five underlying securities.

In addition, the Exchange may request, on a case-by-case basis, an exemption when it desires to list a series from the 100 percent range limitation. This procedure would enable the Exchange to list options series with strike prices that are more than 100 percent above or below the price of an underlying security, if unanimously agreed upon by all exchanges that list options overlying the security.[6]

The Exchange notes that the proposal would not restrict its ability to list options series in two situations. First, the Exchange would not be restricted from listing options series that have been properly listed by another exchange. And second, the proposal expressly eliminates the applicability of range limitations with regard to the listing of $1 strike prices in option classes participating in the $1 Strike Program, and the listing of series of FLEX options.[7]

The Exchange believes that the proposed rule change implementing range limitation strategies for equity, ETF, and TIR options should be beneficial in reducing quote traffic on the Exchange and in the options industry.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that codifying certain range limitation provisions of the OLPP, as amended, serves to foster investor protection.

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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(6)(iii) thereunder[12] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–103 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.

[5] This restriction would not prohibit the listing of at least three options series per expiration month in an option class.

[6] Application of any of the aforementioned exceptions and/or exemptions to the strike price range limitations for an underlying security would be available to all exchanges listing options on such security.

[7] For the $1 Strike Program, *see* Commentary .05 to Rule 1012. For FLEX Options, *see* Rule 1079.

[8] The Exchange's belief regarding reduction of quote traffic in the options industry is based, as discussed previously, on the expectation that other options exchanges will file similar rule change proposals. According to a recent study, if all options exchanges implement range limitations of the type proposed herein, the options industry would expect an approximate four percent reduction in the number of series traded, with only a nominal reduction in trading volume. *See* Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (order approving Amendment No. 3 to the OLPP).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

All submissions should refer to File Number SR–Phlx–2009–103. 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 self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–103 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30600 Filed 12–24–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61189; File No. SR–FINRA–2009–089]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed FINRA Rule 6490 (Processing of Company-Related Actions), To Clarify the Scope of FINRA's Authority When Processing Documents Related to Announcements for Company-Related Actions for Non-Exchange Listed Securities and To Implement Fees for Such Services

December 17, 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 December 7, 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, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to adopt proposed FINRA Rule 6490 (Processing of Company-Related Actions), to clarify the scope of FINRA's regulatory authority and discretionary power when processing documents related to announcements for company-related actions for non-exchange listed equity and debt securities and to implement fees for such services.

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, on the Commission's Web site at *http://www.sec.gov,* 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.

[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

FINRA is proposing to: (1) Adopt FINRA Rule 6490 (Processing of Company-Related Actions) to clarify the scope of FINRA's regulatory authority and discretionary power when processing documents related to announcements for company-related actions for non-exchange listed equity and debt securities; and (2) implement fees for such services.

FINRA's Current Role in the OTC Market

FINRA performs several critical functions with respect to the over-the-counter (OTC) market, including the operation of the OTC Bulletin Board (OTCBB), which provides a mechanism for FINRA members to quote certain SEC-registered OTC equity securities, and the OTC Reporting Facility (ORF), which provides a mechanism for FINRA members to trade report, for both regulatory and dissemination purposes, transactions in OTC equity securities.

In addition to these functions, FINRA performs other more limited functions relating to the processing of non-exchange listed issuer company actions in the OTC market. Specifically, in furtherance of FINRA's obligations to foster cooperation and coordination of the clearing, settling and processing of transactions in equity and debt securities of issuers with a class of publicly traded, non-exchange listed securities, FINRA reviews and processes documents related to announcements for company-related actions pursuant to Rule 10b–17 (Untimely Announcements of Record Dates) of the Act (''SEA Rule 10b–17'').

OTC issuers provide notice to FINRA to affect a full range of company-related actions pursuant to SEA Rule 10b–17, including dividends or other distributions in cash or kind, stock splits or reverse stock splits, or rights or other subscriptions offerings (''SEA Rule 10b–17 Actions''). In addition, FINRA processes documents related to other company actions, including the issuance or change to a trading symbol or company name, mergers, acquisition, dissolutions or other company control transactions, bankruptcy or liquidations (''Other Company-Related Actions''; and together with SEA Rule 10b–17 Actions, collectively referred to hereinafter as

''Company-Related Actions''). FINRA also maintains the symbols database for issuers. FINRA, in turn, provides notice to the marketplace of such events and adjusts issuers' stock prices, if necessary. These functions are important to trading and settlement in the OTC marketplace and help promote investor protection and market integrity.

In performing these issuer-related functions, FINRA's role has been primarily ministerial in nature, due in large part to its limited jurisdictional reach. FINRA does not impose listing standards for securities and maintains no formal relationship with, or direct jurisdiction over, issuers. FINRA's authority to perform these functions flows primarily from two sources: SEA Rule 10b–17 and FINRA's Uniform Practice Code (NASD Rule 11000 Series) (''UPC''). SEA Rule 10b–17 requires issuers with a class of publicly traded, non-exchange listed, securities to provide notice to FINRA generally 10-days before the record date involved in the following corporate actions: Dividends or other distributions in cash or kind, stock splits or reverse stock splits, or rights or other subscriptions offerings. The UPC sets forth a basic framework of rules between broker-dealers for the settlement of non-exchange listed securities quoted and/or traded in the OTC market.

The SEC has expressed concern that certain parties may be attempting to use the facilities of FINRA, including the noted ministerial functions described above and requests to announce Company-Related Actions, to further fraudulent activities.[3] While it is understood that FINRA does not operate a ''listing market'' and has no privity with OTC issuers, FINRA's OTC operations involve a wide range of touch points with OTC issuers and require FINRA to carry out a variety of labor-intensive tasks (*e.g.,* OTC issuers interact directly with FINRA operations staff to announce a full range of Company-Related Actions). As such, there is concern that FINRA's Company-Related Action processing services may potentially be utilized by parties to further microcap fraud on the part of the OTC issuers and penny stock promoters.

Proposal

FINRA is proposing to adopt new FINRA Rule 6490 (Processing of Company-Related Actions) that would clarify the scope of FINRA's regulatory authority and discretionary power when reviewing and processing documents related to requests for Company-Related Actions. In addition, FINRA is also proposing to implement fees for such services to more equitably allocate costs related to the processing of Company-Related Actions. The proposed rule would codify the authority of FINRA's Department of Operations (Department) to conduct in-depth reviews of Company-Related Actions and allow the staff discretion not to process such actions that are incomplete or when certain indicators of potential fraud exist.

Specifically, the proposed rule would establish procedures for the submission, review, and determination of Company-Related Actions. The proposed rule would permit the Department to prescribe the forms, supporting documentation and procedures necessary to conduct more in-depth reviews of OTC issuer Company-Related Actions. Specifically, the proposed rule would provide that an issuer or other duly authorized representative of the issuer (''Requesting Party'') must submit a request for FINRA to review and process documentation related to an SEA Rule 10b–17 Action or Other Company-Related Action within the time frames specified by either SEA Rule 10b–17[4] or, for Other Company-Related Actions no later than ten (10) calendar days prior to the effective date of the company action. All such requests must be accompanied by proof of payment of a non-refundable fee specified in the proposed fee table. In addition, the proposed rule would provide that initial symbol set up requests may also be submitted by members or associated persons of members in order to comply with regulatory reporting requirements.

However, in recognition of the lack of privity FINRA has with OTC issuers, FINRA is proposing to adopt Supplementary Material .02 (Requests by Third-Parties), which would permit FINRA, in its discretion, to announce a Company-Related Action when it is contacted by a third party, such as The Depository Trust & Clearing Corporation (DTCC), foreign exchanges or regulators, members or associated persons. FINRA would request that the third-party contact the issuer in question regarding its obligations under SEA Rule 10b–17 or other rules and regulations, as applicable, and instruct the issuer to contact FINRA directly to provide notice and complete the requisite forms. However, FINRA may in its discretion review and process a Company-Related Action based on information from a third-party when it believes such action is necessary for the protection of the market and investors and/or FINRA has been unable to obtain notification of the Company-Related Action from the issuer.

The proposed rule would permit the Department to request additional information or documentation as may be necessary for the Department to verify the accuracy of the information submitted by the Requesting Party. If the Requesting Party does not sufficiently respond within 90 calendar days of the date the Department requests additional information or documentation, the request will be deemed ''lapsed'' and will be closed.

The proposed rule would also provide that where a Company-Related Action is deemed deficient, the Department may determine that it is necessary for the protection of investors, the public interest and to maintain fair and orderly markets, that documentation related to a Company-Related Action will not be processed.

Factors that may be considered by the Department in finding a request to process documentation deficient are *explicitly limited* to the following: (1) FINRA staff reasonably believes the forms and all supporting documentation, in whole or in part, may not be complete, accurate or with proper authority; (2) the issuer is not current in its reporting obligations, if applicable, to the SEC or other regulatory authority; (3) FINRA has actual knowledge that parties related to the Company-Related Action are the subject of pending, adjudicated or settled regulatory action or investigation by a regulatory body, or civil or criminal action related to fraud

[3] *See,* for example, SEC Order of Suspension of Trading In the Matter of Andros Isle, Corporation, *et al.* [sic], dated March 13, 2008 (File No. 500–1), wherein the SEC suspended trading pursuant to SEA Section 12(k), in the securities of approximately 26 Pink Sheet securities stating ''[c]ertain persons appear to have usurped the identity of a defunct or inactive publicly traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly traded corporation.'' *See also, SEC* v. *Irwin Boock, Stanton B.J. DeFreitas, Nicolette D. Loisel, Roger L. Shoss, and Jason C. Wong, Birte Boock, and 1621566 Ontario, Inc.,* Civil Action No. 09 CV 8261 (S.D.N.Y.) (DLC), Litigation Release No. 21243/October 8, 2009 (SEC Charges Five With Dozens of Fraudulent Corporate Hijackings and Unregistered Offerings of Securities and Names Two Relief Defendants).

[4] SEA Rule 10b–17 provides that notice must be given to FINRA no later than 10 days prior to the record date involved or, in case of a rights subscription or other offering, if such 10 days advance notice is not practical, on or before the record date and in no event later than the effective date of the registration statement to which the offering relates. For example, an issuer of non-exchange listed publicly traded securities that is planning a stock split on shares of its common stock to holders of record on February 25 would be required under SEA Rule 10b–17 to provide written notice to FINRA no later than 10 days prior to the record date for such transaction, or by February 15.

or securities laws violations [5]; (4) a government authority or regulator has provided information to FINRA, or FINRA has actual knowledge, indicating that persons related to the Company-Related Action may be potentially involved in fraudulent activities related to the securities market and/or pose a threat to public investors; and/or (5) there is significant uncertainty in the settlement and clearance process for the security.

Following a determination by the Department that a request to process a Company-Related Action is deficient, the Department must provide written notice to the Requesting Party. Such written notice shall state the specific factor(s) that caused the request to be deemed deficient. A Requesting Party may appeal such determination to a three-member subcommittee comprised of current or former industry members of FINRA's Uniform Practice Code Committee in writing within seven (7) calendar days after service of the notice. The written request for an appeal must be accompanied by proof of payment of the non-refundable Action Determination Appeal Fee and must set forth with specificity any and all defenses to the Department's determination that a request was deficient. An appeal to the subcommittee will operate to stay the processing of the Company-Related Action (*i.e.,* the requested Company-Related Action shall not be processed during the period that the Requesting Party requests an appeal or while any such appeal is pending). The subcommittee will convene once each calendar month to consider all appeals received during the prior month and will render a determination within three (3) business days following the day the appeal is considered by the subcommittee. The subcommittee's determination will constitute final action by FINRA. If the Requesting Party fails to file a written request for an appeal within seven (7) calendar days after service of notice, the Department's determination shall constitute final action by FINRA.

In addition, FINRA is proposing to establish fees for Requesting Parties submitting documentation to announce a Company-Related Action. The proposed fees would include late fees for Requesting Parties that fail to provide timely notice of Company-Related Actions. FINRA believes that late fees will encourage OTC issuers to meet the various deadlines, including those associated with SEA Rule 10b–17, which is critical to enable FINRA to process such requests in a timely fashion in order to provide adequate notice to market participants. In addition, the proposed fees will also prove beneficial in that they will offset some of the significant costs that FINRA is currently bearing for the benefit of OTC issuers that are not otherwise paying to support the OTC symbol database and OTC issuer Company-Related Action processing.

Specifically, FINRA is proposing to charge the following non-refundable fees for the review and processing of documentation related to SEA Rule 10b–17 Actions and Other Company-Related Actions:

	Fee
SEA Rule 10b–17 Action:	
Timely SEA Rule 10b–17 Notification	$200
Late SEA Rule 10b–17 Notification Submitted at least 5 calendar days prior to Corporate Action Date	1,000
Late SEA Rule 10b–17 Notification Submitted at least 1 calendar day prior to Corporate Action Date	2,000
Late SEA Rule 10b–17 Notification Submitted on or after Corporate Action Date	5,000
Other Company-Related Action:	
Voluntary Symbol Request Change	500
Initial Symbol Set Up	([1])
Symbol Deletion	([1])
Appeals:	
Action Determination Appeal Fee	4,000

[1] No charge.

However, in recognition of the critical nature of SEA Rule 10b–17 information to the marketplace, FINRA is proposing to adopt Supplementary Material .01 (SEA Rule 10b–17 Fee Accumulations), which would permit FINRA to process documentation for Company-Related Actions, absent a determination that the action is deficient, even if the fee is not paid. All unpaid SEA Rule 10b–17 Action fees associated with a specific OTC issuer would be accumulated and FINRA would not process Voluntary Symbol Request Changes until all unpaid accumulated fees are paid. FINRA believes that this accumulation authority would create incentives for issuers that are not otherwise subject to FINRA's direct jurisdiction, to comply with the requirements of this rule without compromising FINRA's investor protection mission. Acceptance and processing of ''late'' Company-Related Action requests and related fees by FINRA, will not act to relieve an issuer of potential violations of SEA Rule 10b–17 or other Federal, State or SRO rules.

In addition, in connection with mandatory symbol set ups or changes, FINRA generally assigns issuers random symbols. As a result, FINRA will not charge a voluntary symbol request change fee in connection with a mandatory symbol change that results from an SEA Rule 10b–17 Action (*i.e.,* a mandatory symbol change required because of a CUSIP number change or otherwise in direct connection with an SEA Rule 10b–17 Action will not require the payment of the Voluntary Symbol Request Change fee). However, the request (and granting, subject to symbol availability) of a specific symbol in connection with an SEA Rule 10b–17 Action will result in such a fee being assessed in addition to the requisite SEA Rule 10b–17 Action fee.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* The effective date will be no later than 90 days following 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,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative

[5] This would include instances where FINRA has actual knowledge that the SEC has issued an order pursuant to Section 12(k) of the Exchange Act temporarily suspending the issuer's securities or pursuant to Section 12(j) of the Exchange Act revoking registration of the issuer's securities.

[6] 15 U.S.C. 78*o*–3(b)(6).

acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Act,[7] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule will codify FINRA's authority and discretion to review and process documents related to requests for Company-Related Actions in the OTC securities and, along with the proposed new fees for such services, act to ensure there is more complete, accurate and timely information concerning Company-Related Actions.

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. 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 such 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 Exchange 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–2009–089 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–2009–089. 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,[8] 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 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–2009–089 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30597 Filed 12–24–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/.*

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61201; File No. SR–NYSE–2009–127]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Program That Offers Liquidity Takers a Reduced Transaction Fee Structure for Certain Bond Trades Executed on the NYSE Bonds System and Retiring the Liquidity Provider Credit Pilot Program

December 18, 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 December 17, 2009, the 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 Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) 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 change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program that offers liquidity takers a reduced transaction fee structure for certain bond trades executed on the NYSE Bonds℠ system (''NYSE Bonds'') to June 30, 2010, and retire the pilot program that issues liquidity providers a $20 credit for certain bond trades executed on NYSE Bonds with an execution size of less than 20 bonds that is due to expire on December 31, 2009. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyx.com*), on the Commission's Web site (*http://www.sec.gov*), at the Exchange's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange LLC (the ''Exchange'' or the ''NYSE'') proposes to: (1) Extend the pilot program that offers liquidity takers a reduced transaction fee structure for certain bond trades executed on the NYSE Bonds℠ system (''NYSE Bonds'') to June 30, 2010, and (2) retire the pilot program that issues liquidity providers a $20 credit for certain bond trades executed on NYSE Bonds with an execution size of less than 20 bonds that is due to expire on December 31, 2009.

Liquidity Taker Pilot Program

The Exchange's pilot program reduces transaction fees charged to liquidity takers for transactions executed on NYSE Bonds with a staggered transaction fee schedule based on the number of bonds purchased or sold in excess of ten (10) bonds. Currently, the transaction fee for orders that take liquidity from the market is $.50 per bond. This fee remains unchanged for orders up to ten (10) bonds. The extended fee filing pilot program provides for the following transaction fee schedule: (1) When the liquidity taker purchases or sells from one to ten (10) bonds, the Exchange will charge an execution fee of $0.50 per bond; (2) when the liquidity taker purchases or sells from eleven (11) to twenty-five (25) bonds, the Exchange will charge an execution fee of $0.20 per bond, and (3) when the liquidity taker purchases or sells twenty-six (26) bonds or more, the Exchange will charge an execution fee of $0.10 per bond.

For example, if a liquidity taker purchases or sells five (5) bonds, the Exchange will charge $.50 per bond, or a total of $2.50 for execution fees. If a liquidity taker purchases or sells twenty (20) bonds, the Exchange will charge $.20 per bond or a total of $4.00 for execution fees. If a liquidity taker purchases or sells thirty (30) bonds, the Exchange will charge $.10 per bond or a total of $3.00 for execution fees.

The Exchange will continue to impose a $100 execution fee cap per transaction.

The Exchange seeks to file with the Commission, a proposal to make this liquidity taker program permanent. Accordingly, the Exchange proposes to extend the pilot program for an additional six (6) months in order to give the Exchange the necessary time to complete the 19b–4 process regarding the program permanency filing.

Liquidity Taker Pilot Program

In December 2007, the Exchange initiated a four-month pilot program that issued liquidity providers a $20 credit for certain bond trades executed on the NYSE Bonds with an execution size of less than 20 bonds.[5] This pilot program was extended twice with the most recent expiration date of December 31, 2009.[6]

The purpose of establishing a $20 credit program for liquidity providers was to incentivize them to display the best price available on NYSE Bonds. However, during the operation of this pilot, no significant liquidity was generated. This is not the case with the pilot program for liquidity takers. Accordingly, the Exchange proposes that the pilot program for liquidity providers be retired on its expiration date of December 31, 2009, and be removed from the NYSE Price List.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act[7] in general and Section 6(b)(4) of the Act[8] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–20098–127 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–2009–127. 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

[5] *See* Securities Exchange Act Release No. 56894 (December 7, 2007), 72 FR 70362 (December 11, 2007) (SR–NYSE–2007–107).

[6] *See* Securities Exchange Act Release Nos. 57617 (April 4, 2008), 73 FR 19542 (April 10, 2008) (SR–NYSE–2008–25) and 59177 (December 30, 2008), 74 FR 747 (January 7, 2009) (SR–NYSE–2008–136).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–127 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30616 Filed 12–24–09; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61203; File No. SR–NASDAQ–2009–108]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify Certain Provisions of the Options Listing Procedures Plan Into the Exchange's Rules

December 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 7, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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

NASDAQ is filing a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') [sic] amend its Chapter IV, Section 6 (Series of Options Contracts Open for Trading) to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange.

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to implement in NOM rules, specifically Chapter IV, Section 6, changes that were recently made to the Plan for the Purpose of Developing and Implementing Procedures Designated to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934, also known as the Options Listing Procedures Plan (''OLPP''), in Amendment No. 3 thereto.[3] The proposed rule change incorporates uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, as a quote mitigation strategy intended to reduce the overall number of option series available for trading, which will in turn lessen the rate of increase in quote traffic (''range limitations'' or ''range limitation strategy'').[4]

Chapter IV, Section 6 currently indicates what series of option contracts may be open for trading after a particular class of options has been approved for trading on the Exchange. This proposal adds Supplementary Material .09 to Section 6 that applies certain ''range limitations'' to the addition of new series for options classes overlying equity securities, Exchange Traded Funds (''ETFs''), or Trust Issued Receipts (''TIRs'').

As proposed in Supplementary Material .09 to Section 6, if the price of the underlying security is less than or equal to $20, the Exchange would not list new option series with an exercise price more than 100 percent above or below the price of the underlying security.[5] If the price of the underlying security is greater than $20, the Exchange would not list new option series with an exercise price more than 50 percent above or below the price of the underlying security. The proposal provides for an objective basis upon which the underlying prices for the price range limitations described above shall be determined, specifically in regard to intra-day add-on series and next-day series additions, new expiration months and for option series to be added as a result of pre-market trading.

The proposal also allows the Exchange to designate up to five underlying securities to which, instead of the aforementioned 50 percent restriction, a 100 percent restriction would apply. These designations would be made on an annual basis and cannot be removed during the calendar year unless the option class is delisted by the Exchange, in which case the Exchange may designate another class to replace the delisted class. If a designated class

[3] *See* Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (order approving Amendment No. 3 to the OLPP, which would apply uniform objective standards to the range of options series exercise or strike prices available for trading on exchanges that are sponsors of OLPP). The sponsors of OLPP include NASDAQ, Chicago Board Options Exchange, Incorporated; International Stock Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX Phlx, Inc.; NYSE Amex, LLC; and NYSE Arca, Inc. (together known as the ''Plan Sponsor Exchanges''). The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series and replaces and supersedes the Joint-Exchange Options Plan (''JEOP''). *See* Securities Exchange Act Release No. 44521 (July 6, 2009), 66 FR 36809 (July 13, 2001) (order approving OLPP). *See also* Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48954 (September 25, 1991) (order approving JEOP).

[4] The Exchange expects that other Plan Sponsor Exchanges will file similar rule change proposals implementing range limitations in their rules to mitigate quotes. *See, for example,* Securities Exchange Act Release No. 60995 (November 13, 2009), 74 FR 60008 (November 19, 2009) (SR–CBOE–2009–084) (notice of filing and immediate effectiveness).

[5] This restriction would not prohibit the listing of at least three options series per expiration month in an option class.

is delisted by the Exchange but continues to trade on at least one other exchange, any additional series for the class which are added from that point forward would again be subject to the proposed exercise price range limitations, unless the class is subsequently designated by another exchange. The proposal also provides a procedure for the Exchange to request, if conditions warrant, additional case-by-case exceptions even when it has already so designated five underlying securities.

In addition, the Exchange may request, on a case-by-case basis, an exemption when it desires to list a series from the 100 percent range limitation. This procedure would enable the Exchange to list options series with prices that are more than 100 percent above or below the price of an underlying security, if unanimously agreed upon by all exchanges that list options overlying the security.[6]

The Exchange notes that the proposal would not restrict its ability to list options series in two situations. First, the Exchange would not be restricted from listing options series that have been properly listed by another exchange. And second, the proposal expressly eliminates the applicability of range limitations with regard to the listing of $1 strike prices in option classes participating in the $1 Strike Program.[7]

The Exchange believes that the proposed rule change implementing range limitation strategies for equity, ETF, and TIR options should be beneficial in reducing quote traffic on the Exchange and in the options industry.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that codifying certain range limitation provisions of the OLPP, as amended, serves to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(6)(iii) thereunder[12] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate.[13]

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–NASDAQ–2009–108 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–NASDAQ–2009–108. 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 self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–108 and should be submitted on or before January 19, 2010.

[6] Application of any of the aforementioned exceptions and/or exemptions to the exercise or strike price range limitations for an underlying security would be available to all exchanges listing options on such security.

[7] For the $1 Strike Program, *see* Supplementary Material .02 to Chapter IV, Section 6.

[8] The Exchange's belief regarding reduction of quote traffic in the options industry is based, as discussed previously, on the expectation that other options exchanges will file similar rule change proposals. According to a recent study, if all options exchanges implement range limitations of the type proposed herein, the options industry would expect an approximate four percent reduction in the number of series traded, with only a nominal reduction in trading volume. *See* Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (order approving Amendment No. 3 to the OLPP).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30598 Filed 12–24–09; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Director for Reports Clearance to the addresses or fax numbers shown below.

(OMB) Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submion@omb.eop.gov.*

(SSA) Social Security Administration, DCBFM, Attn: Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–0454, *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 26, 2010. Individuals can obtain copies of the collection instrument by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above email address.

1. *Request to Resolve Questionable Quarters of Coverage (QC); Request for QC History Based on Relationship—0960–0575.* States use the information from Form SSA–512 to request clarification from SSA on questionable QC information. The Personal Responsibility and Work Opportunity Reconciliation Act states that aliens admitted for lawful residence who have worked and earned 40 qualifying QCs for Social Security purposes can generally receive state benefits. States use the information from Form SSA–513 to request QC information for an alien's spouse or child in cases where the alien does not sign a consent form giving permission to access his/her Social Security records. QCs can also be allocated to a spouse and/or to a child under age 18, if needed, to obtain 40 qualifying QCs for the alien. The respondents are state agencies that require QC information to determine eligibility for benefits.

Type of Request: Extension of an OMB-approved information collection.

Form Number	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–512	25,000	1	2	834
SSA–513	25,000	1	2	834
Totals	50,000			1,668

2. *Statement for Determining Continuing Eligibility Supplemental Security Income Payment—20 CFR 416.204—0960–0145.* SSA uses the information from Form SSA–8202–BK to a conduct low- and middle-error-profile telephone or face-to-face redeterminination interviews with Supplemental Security Income (SSI) recipients and representative payees. The information SSA collects during the interview is necessary to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been, and are still receiving, the correct payment amount.

Type of Request: Revision of an OMB-approved information collection.

Form Number	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–8202–BK	1,000,000	1	21	350,000
MSSICS	201,328,000	1	20	67,109,333
Totals	202,328,000			67,459,333

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 27, 2010. You can obtain a copy of the OMB clearance packages by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above email address.

1. *Certificate of Support—20 CFR 404.370, 404.750, 404.408a—0960–0001.* A parent of a deceased, fully insured worker may be entitled to Title II benefits on the earnings record of the deceased worker under certain conditions. One of the conditions is the

[14] 17 CFR 200.30–3(a)(12).

parent must have received at least one-half support from the deceased worker. The one-half support requirement also applies to a spouse applicant in determining whether Title II benefits are subject to Government Pension Offset (GPO). SSA uses the information from Form SSA–760–F4 to determine whether the parent of a deceased worker or a spouse applicant meets the one-half support requirement. Respondents are parents of deceased workers or spouses who may be exempt from GPO.

Note: This is a correction notice. SSA published this information collection as an extension on October 26, 2009, at 74 FR 55080. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 18,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 4,500 hours.

2. *Reporting Changes that Affect Your Social Security Payment—20 CFR 404.301–305, 404.310–311, 404.330–.333, 404.335–.341, 404.350–.352, 404.468—0960–0073.* SSA collects the information on the SSA–1425 to determine continuing entitlement to Title II Social Security benefits and to determine the proper benefit amount. The respondents are Social Security beneficiaries receiving SSA retirement, disability, or survivor's auxiliary benefits who need to report an event that could affect payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 70,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 5,833 hours.

3. *Child Relationship Statement—20 CFR 404.355 & 404.731—0960–0116.* SSA collects information on the SSA–2519 to help determine a child's entitlement to Social Security benefits under section 216(h)(3) (deemed child provision) of the Social Security Act. An insured individual's child may be deemed his or her child if: (1) The insured individual is shown by evidence satisfactory to SSA to be the child's parent and was living with or contributing to the child's support at certain specified times; or (2) the insured individual acknowledged the child in writing or the court decreed the individual to be the child's parent or ordered the individual to support the child. Respondents are persons with knowledge of the relationship between an individual and his/her alleged biological child who is filing for benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

4. *Pre-1957 Military Service—Federal Benefit Questionnaire—20 CFR 404.1301–404.1371—0960–0120.* Sections 217(a) through (e) of the Social Security Act provide for crediting military service before 1957 to the wage earner's record. Form SSA–2512 collects specific information about other Federal, military, or civilian benefits the wage earner may receive when the applicant indicates both pre-1957 military service and the receipt of a Federal benefit. SSA uses the data in the claims adjudication process to grant gratuitous military wage credits when applicable, and to solicit sufficient information to determine eligibility. Respondents are applicants for Social Security benefits on a record where the wage earner has pre-1957 military service.

Note: This is a correction notice. SSA published this information collection as an extension on October 26, 2009 at 74 FR 55080. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 833 hours.

5. *Application of Circuit Court Law—20 CFR 404.985 & 416.1458—0960–0581.* SSA collects certain information provided in readjudication requests it receives from persons claiming the application of an acquiescence ruling (AR) would change a prior determination or decision. SSA uses this information to determine whether persons are entitled to readjudication of their claims in accordance with Social Security regulations. SSA reviews the information in the requests to determine whether the issue(s) stated in the AR pertains to the claimant's case. If readjudication is appropriate, SSA considers only those issue(s) the AR covers. Any new determination or decision is subject to administrative or judicial review as specified in the regulations. Respondents are claimants for Social Security benefits and SSI payments who request readjudication.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 2,833 hours.

Dated: December 21, 2009.

Elizabeth A. Davidson,

Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. E9–30633 Filed 12–24–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1050X, STB Docket No. AB–585 (Sub-No. 4X), STB Docket No. AB–33 (Sub-No. 288X)]

Regional Rail Right of Way Company—Abandonment Exemption—in Collin and Dallas Counties, TX; Dallas, Garland and Northeastern Railroad, Inc.—Discontinuance Exemption—in Collin and Dallas Counties, TX; Union Pacific Railroad Company—Discontinuance Exemption—in Collin and Dallas Counties, TX

Regional Rail Right of Way Company (RRROW), Dallas, Garland and Northeastern Railroad, Inc. (DGNO), and Union Pacific Railroad Company (UP) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* for RRROW to abandon, and for DGNO and UP to discontinue trackage rights over, a 5.34-mile line of railroad known as the Cotton Belt, extending between milepost 592.43 at Renner Junction and milepost 597.77 at Knoll Trail Road in Collin and Dallas Counties, TX.[1] The line traverses

[1] In 1999, DGNO acquired, *inter alia,* local trackage rights over the line from UP, a successor in interest to St. Louis Southwestern Railway Company, which held both local and overhead trackage rights at the time. *See Dallas, Garland & Northeastern Railroad, Inc.—Lease Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 33686 (STB served Feb. 5, 1999). In 2003, Dallas Area Rapid Transit (DART) acquired, *inter alia,* from RRROW, a successor in interest to Dallas Area Rapid Transit Property Acquisition Corporation, the right, title, and ownership interest in the right-of-way, trackage, and other physical assets associated with the line, subject to RRROW's reservation of an exclusive, perpetual freight rail operating easement. *See Dallas Area Rapid Transit—Acquisition Exemption—Certain Assets of Regional Rail Right of Way Company,* STB Finance Docket No. 34346 (STB served June 3, 2003). DART currently owns the line. RRROW owns a freight rail operating easement over the line (including the residual common carrier obligation to provide freight service), and DGNO owns local trackage

United States Postal Service Zip Codes 75248, 75252 and 75080.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on January 27, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 7, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 19, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: For RRROW, Edward J. Fishman, K&L Gates LLP, 1601 K Street, NW., Washington, DC 20006; for DGNO, Scott Williams, Senior V.P. and General Counsel, RailAmerica, 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256; and for UP, Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuances on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 31, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRROW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been affected by RRROW's filing of a notice of consummation by December 28, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: December 22, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–30609 Filed 12–24–09; 8:45 am]

BILLING CODE 4915–01–P

rights over the line. Although RRROW believes that UP does not retain any trackage rights over the line as a result of the aforementioned 1999 transaction with DGNO, UP is joining this transaction out of an abundance of caution to discontinue any trackage rights that UP may continue to have over the line.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1054 (Sub-No. 1X)]

Northern Plains Railroad, Inc.—Discontinuance of Service Exemption—in Bottineau, Rolette, and Towner Counties, ND

Northern Plains Railroad, Inc. (NPR),[1] has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over 60.5 miles of a line of railroad owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway (Soo) between milepost 474.5, in Bisbee, Towner County, ND, and milepost 535.0, in Kramer, Bottineau County, ND.[2] The line traverses United States Postal Service Zip Codes 58748, 58318, 58384, 58366, 58310, and 58317.

NPR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[3]

As a condition to these exemptions, any employee adversely affected by the service discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial

[1] NPR was authorized to lease and operate the line in *Northern Plains Railroad, Inc.—Lease and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway,* STB Finance Docket No. 33324 (STB served Jan. 9, 1997).

[2] Soo was authorized to abandon the line in *Soo Line Railroad Company d/b/a Canadian Pacific Railway Company—Abandonment Exemption—in Bottineau, Rolette, and Towner Counties, ND,* STB Docket No. AB–57 (Sub-No. 56X) (STB served Sept. 5, 2008).

[3] Because this is a discontinuance of service proceeding and not an abandonment, the proceeding is exempt from the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), and 49 CFR 1105.11 (transmittal letter).

assistance (OFA) has been received, this exemption will be effective on January 27, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[4] must be filed by January 7, 2010.[5] Petitions to reopen must be filed by January 19, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Jeremy M. Berman, Fletcher & Sippel LLC, 29 N. Wacker Drive, Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 18, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–30576 Filed 12–24–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1054X]

Northern Plains Railroad, Inc.—Discontinuance of Service Exemption—in Ramsey and Benson Counties, ND

Northern Plains Railroad, Inc. (NPR),[1] has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over 26.24 miles of a line of railroad owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway (Soo) between milepost 446.0, in Devils Lake, Ramsey County, ND, and milepost 472.24, in Harlow, Benson County, ND.[2] The line traverses United States Postal Service Zip Codes 58301, 58362, 58325, 58351, and 58346.

NPR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[3]

As a condition to these exemptions, any employee adversely affected by the service discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 27, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[4] must be filed by January 7, 2010.[5] Petitions to reopen must be filed by January 19, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Jeremy M. Berman, Fletcher & Sippel LLC, 29 N. Wacker Drive, Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 18, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–30574 Filed 12–24–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to various proposed highway projects in the State of Texas. Those actions grant licenses, permits and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before June 28, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Salvador Deocampo, District Engineer, Texas Division, FHWA, J.J. Pickle Federal Building 300 East 8th Street, Room 826, Austin, Texas 78701; phone number 512–536–5950; *e-mail: salvador.deocampo@fhwa.dot.gov.* FHWA Texas Division normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday. You may also contact Ms. Dianna Noble, P.E., Director Environmental Affairs Division, Texas Department of Transportation (TxDOT), 118 E. Riverside, Austin, Texas, 78704; phone number 512–416–2734; *e-mail: dnoble@dot.state.tx.us.* Texas Department of Transportation normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below. The actions by the Federal agencies on the project, and the laws under which

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[5] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

[1] NPR was authorized to lease and operate the line in *Northern Plains Railroad, Inc.—Lease and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway,* STB Finance Docket No. 33324 (STB served Jan. 9, 1997).

[2] Soo was authorized to abandon 28.35+/miles of rail line (approximately 2 miles longer than the line leased by NPR) in *Soo Line Railroad Company—Abandonment Exemption—in Ramsey and Benson Counties, ND,* STB Docket No. AB–57 (Sub-No. 54X) (STB served Oct. 22, 2004).

[3] Because this is a discontinuance of service proceeding and not an abandonment, the proceeding is exempt from the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), and 49 CFR 1105.11 (transmittal letter).

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[5] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

such actions were taken, are described in the documented Environmental Assessment (EA) and Environmental Impact Statement (EIS) issued in connection with the projects, and in other documents project records. The EA, Findings of No Significant Impacts (FONSI), Record of Decision (ROD) and other project records for the listed projects are available by contacting the FHWA or the TxDOT at the addresses provided above and can be viewed and downloaded from each project's website found below.

This notice applies to all Federal agency decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and, Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470]; Archaeological and Historical Preservation Act [16 U.S.C. 469].

6. *Social and Economic:* Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1342]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11514 Protection and Enhancement of Environmental Quality.

The projects subject to this notice are:

1. *Project Location:* State Highway (SH) 121/SH 183 from Interstate (IH) 820 to SH 161 primarily within the cities of North Richland Hills, Hurst, Bedford, Euless, and Fort Worth in Tarrant and Dallas Counties. Project Reference Number: TxDOT CSJ: 0364–01–054, 0364–05–025, 0364–05–026, 0094–02–077.

Project Web site: http://www.txdot.gov/public_involvement/hearings_meetings/121_183.htm.

Project Type: The project will include a controlled access facility consisting of six to eight general purpose lanes and six managed lanes from IH 820 to SH 161. There will be three 12-foot wide general purpose lanes (non-toll) in each direction plus auxiliary lanes and 10-foot wide inside and outside shoulders from IH 820 to the SH 183/SH 360 interchange, and four 12-foot wide general purpose lanes (non-toll) in each direction plus auxiliary lanes and 10-foot wide inside and outside shoulders from the SH 183/SH 360 interchange to SH 161. Three managed (toll) lanes will be provided in each direction from IH 820 to SH 161. The proposed improvements will provide for two 12-foot wide eastbound and westbound frontage lanes, discontinuous at the SH 183/SH 360 interchange, with auxiliary lanes and turn lanes at intersections.

Project Length: Approximately 10.8 miles. General Purpose: The project will improve growth, travel demand, access and mobility, and safety. Final agency actions have been taken under: NEPA, FAHA, FAA, CAA, MBTA, ESA, Civil Rights Act, Section 404, Section 401, Section 4(f), Section 106, ARPA, AHPA, E.O.'s 11990, 11988, 12898, 11514, 11593, and 13175. NEPA document: EA with a FONSI issued October 26, 2009.

2. *Project Location:* SH 121 from IH 30 to FM 1187 primarily within the city of Fort Worth and Tarrant County. Project Reference Number: TxDOT CSJ: 0504–02–008, 0504–02–013 and 0504–02–022.

Project Web site: http://www.txdot.gov/project_information/projects/fort_worth/southwest_parkway/environmental_documents.htm.

Project Type: The project is planned to be a controlled-access divided tollway with discontinuous frontage roads. Ultimately, the project is planned for 6 lanes from IH 30 to IH 20 and 4 lanes from IH 20 to FM 1187.

Project Length: Approximately 15 miles. General Purpose: To provide a financially viable, effective and timely transportation solution which will improve regional mobility, increase people and goods carrying capacity, and alleviate further overburdening of the local transportation system. Final agency actions taken have been under: NEPA, FAHA, CAA, ESA, MBTA, Section 4(f), Civil Rights Act, Section 106, ARPA, AHPA, Section 404, Section 401, E.O.'s 11990, 11988, 12898, 11514, 11593 and 13175. NEPA document: EIS with a ROD issued June 13, 2005 and reaffirmed June 3, 2009.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 17, 2009.

Salvador Deocampo,

District Engineer, Austin Texas.

[FR Doc. E9–30648 Filed 12–24–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF VETERANS AFFAIRS

VBA/VHA Mental Health Summit

AGENCY: Department of Veterans Affairs.

ACTION: Notice of meeting.

SUMMARY: The Department of Veterans Affairs (VA) will hold the Veterans Benefits Administration (VBA)/Veterans Health Administration (VHA) Mental Health Summit to capture current medical science information and economic earnings loss data from presentations made by subject matter experts. VA plans to use this information to update the sections of VA's Schedule for Rating Disabilities (VASRD) that pertain to mental disorders. *See* 38 CFR 4.125–4.130. Specifically, diagnostic code descriptors and percentage ratings will be discussed, as well as whether to add or delete diagnostic codes from the mental health portion of VASRD. Contingent upon available capacity and time, individuals wishing to make oral statements will be accommodated on a first-come, first-served basis.

DATES: The meeting will be held on Thursday and Friday, January 28–29, 2010, from 8 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Capital Hilton, located at 1001 16th Street, NW., in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hesch, VASRD Coordinator, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Anyone wishing to attend the meeting or seeking additional information may also contact Ms. Hesch at (202) 461–9688 or *Jennifer.Hesch@va.gov,* or Mr. Kniffen at (202) 461–9725 or *Thomas.Kniffen@va.gov.*

Dated: December 18, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9–30719 Filed 12–24–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; 2010 Calendar Year Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This Department of Veterans Affairs (VA) notice informs the public of updated data for calculating the ''reasonable charges'' collected or recovered by VA for medical care or services provided or furnished by VA to a veteran for: (1) A nonservice-connected disability for which the veteran is entitled to care or the payment of expenses for care under a health plan contract; (2) a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance. The charge tables and supplemental tables that are applicable to this notice can be viewed on the Veterans Health Administration Chief Business Office's Intranet and Internet Web sites. These changes are effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1595. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Section 17.101 of title 38, U.S. Code of Federal Regulations (CFR), sets forth the Department of Veterans Affairs (VA) medical regulations concerning ''reasonable charges'' for medical care or services provided or furnished by VA to a veteran for: (1) A nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses for care) under a health plan contract; (2) a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulation also provides that data for calculating actual charge amounts at individual VA facilities based on these methodologies will either be published as a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under ''Charge Data.'' The charge tables and supplemental tables that are applicable to this **Federal Register** notice can be viewed on the Veterans Health Administration Chief Business Office's Intranet and Internet Web sites. Certain charges are hereby updated as described below. These changes are effective January 1, 2010.

We note that in cases where charges for medical care or services provided or furnished at VA expense (by either VA or non-VA providers) have not been established under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

The regulation includes methodologies for establishing billed amounts for the following types of charges: Acute inpatient facility charges; skilled nursing facility and sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. Each type of charge is addressed below.

Acute inpatient facility charges remain the same as set forth in the notice published in the **Federal Register** on September 17, 2009 (74 FR 47856). VA's current inpatient charge structure utilizes the methodology set forth in 38 CFR 17.101 and does not itemize inpatient bills.

Skilled nursing facility/sub-acute inpatient facility charges also remain the same as set forth in a notice published in the **Federal Register** on September 17, 2009 (74 FR 47856).

Based on the methodologies set forth in 38 CFR 17.101, this document provides an update to charges for 2010 HCPCS Level II and Current Procedural Technology (CPT) codes. Charges are also being updated based on more recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. These updated charges are effective January 1, 2010.

In this update, we are retaining the table designations used for HCPCS Level II and Current Procedural Technology (CPT) Codes in the notice posted on the Internet site of the Veterans Health Administration Chief Business Office currently at *http://www.va.gov/cbo,* under ''Charge Data.'' The effective date of this change was January 1, 2009, and the notice can be found in the **Federal Register.** 73 FR 75495 (Dec. 11, 2008). Accordingly, the tables identified as being updated by this notice correspond to the applicable tables posted on the Internet with the notice, beginning with Table C.

VA has updated the list of data sources presented in Supplementary Table 1 to reflect the updated charges described in this notice.

The list of VA medical facility locations has also been updated. As a reminder, in Supplementary Table 3 we set forth the list of VA medical facility locations, which includes the first three digits of their zip codes and provider based/non-provider based designations.

Consistent with VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www.va.gov/cbo,* under ''Charge Data.'' The updated data tables and supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

Approved: December 18, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9–30641 Filed 12–24–09; 8:45 am]

BILLING CODE 8320–01–P

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