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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2008–0126]

RIN 0579–AC93

Importation of Hass Avocados From Peru

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of Hass avocados from Peru into the continental United States. As a condition of entry, Hass avocados from Peru will have to be produced in accordance with a systems approach that includes requirements for importation in commercial consignments; registration and monitoring of places of production and packinghouses; grove sanitation; pest-free areas or trapping for the South American fruit fly; pest-free areas or treatment for the Mediterranean fruit fly; surveys for the avocado seed moth; and inspection for quarantine pests by the national plant protection organization of Peru. Hass avocados from Peru will also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the avocados were grown, packed, and inspected and found to be free of pests in accordance with these requirements. This action will allow the importation of Hass avocados from Peru into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: *Effective Date:* February 3, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Charisse Cleare, Regulatory Coordination Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236; (301) 734–0773.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–49, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On January 7, 2009, we published in the **Federal Register** (74 FR 651–664, Docket No. APHIS–2008–0126) a proposal [1] to amend the regulations to allow the importation of Hass avocados from Peru into the continental United States. As a condition of entry, we proposed to require Hass avocados from Peru to be produced in accordance with a systems approach that included requirements for importation in commercial consignments; registration and monitoring of places of production and packinghouses; grove sanitation; pest-free areas, trapping, or treatment for fruit flies; surveys for the avocado seed moth; and inspection for quarantine pests by the national plant protection organization (NPPO) of Peru. We also proposed to require Hass avocados from Peru to be accompanied by a phytosanitary certificate with an additional declaration stating that the avocados were grown, packed, and inspected and found to be free of pests in accordance with the proposed requirements. We proposed to add the systems approach to the regulations in a new § 319.56–49.[2]

We solicited comments concerning our proposal for 60 days ending March 9, 2009. We received 30 comments by that date. They were from private citizens, producers, importers, exporters, and representatives of State and foreign governments. Twenty of the commenters supported the proposed rule. The issues raised by the remaining commenters are discussed below by topic.

General Comments

Two commenters expressed general concerns about the proposed rule. One stated that scientists say that not enough time has passed to study the pests associated with the importation of Hass avocados from Peru and the potential threat those pests pose. This commenter stated that, without substantial inquiry into the effects of the pests, allowing the importation of avocados from Peru would be unsafe, with very serious consequences for California avocado growers. Another commenter stated that California avocado growers have experienced pest introductions due to the inadequate inspection of Hass avocados imported from Mexico, and further stated that there is no reason to expect that inspection of Hass avocados from Peru will provide any better protection.

We prepared a pest risk assessment (PRA) and risk management document (RMD) as part of our evaluation of the request from the NPPO of Peru to export Hass avocados to the United States. Based on the evidence and discussion presented in the PRA and RMD, we have concluded that the mitigations we proposed, with some changes as discussed later in this document, will be effective at preventing the quarantine pests identified in the PRA from being introduced into the United States via the importation of avocados from Peru.

The first commenter did not provide any specific citations supporting the assertion that scientists say not enough time has passed to study the pests associated with the importation of Hass avocados from Peru, nor did the commenter indicate that the evidence presented in the PRA and RMD was inadequate.

With regard to the second commenter's concern about pests being introduced via the importation of Hass avocados from Mexico, it should be noted that, in 9 years of fruit cutting and inspection of Hass avocados imported from Mexico, over 28 million fruit were examined (20.2 million in the orchards, 7.2 million in packinghouses, and 602,490 at border inspection ports) for pests. Twice, the quarantine pest *Contrachelus perseae* was found, both times in backyard avocados that would not have been eligible to be exported to

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0126.*

[2] In this final rule, the provisions of the systems approach are added as § 319.56–50. We discuss the comments in terms of provisions of proposed § 319.56–49 so that the reader can follow along with the proposal.

the United States. Both outbreaks of this pest were eradicated. All other avocados from this export program have been found to be free of quarantine pests. There is no evidence that the importation of Hass avocados from Mexico has resulted in the introduction of quarantine pests into the United States.

Comments on the PRA

We prepared a draft PRA titled ''Importation of 'Hass' Avocado (*Persea americana*) Fruit from Peru into the Continental United States'' (May 2006). The draft PRA evaluated the risks associated with the importation of Hass avocados into the continental United States (the lower 48 States and Alaska) from Peru. We published a notice [3] in the **Federal Register** on May 25, 2006 (71 FR 30113, Docket No. APHIS–2006–0072), in which we advised the public of the availability of the draft PRA and solicited comments on it for 60 days ending July 24, 2006. We also conducted a peer review of the draft PRA. We made changes to the May 2006 PRA in response to public comments and peer review comments and prepared a revised PRA, dated December 2008, for the January 2009 proposal. We accepted comments on the revised PRA during the comment period for the proposed rule.

One commenter provided a comment on the May 2006 PRA recommending that mirids of the genus *Dagbertus* be added to the list of quarantine pests associated with Hass avocados from Peru. We stated in the December 2008 PRA that we had not found any evidence that *Dagbertus* spp. were pests of avocados in Peru. Addressing this statement, the commenter provided an unpublished study that the commenter believed supported the addition of *Dagbertus* spp. to the list of quarantine pests of avocados in Peru. The commenter also consulted an entomologist, who stated that he had not tested whether *Dagbertus* spp. can oviposit in hard mature avocado fruit and added, with respect to the pests' ability to travel the commercial pathway, ''I can't guarantee it won't happen.'' The commenter urged APHIS to further evaluate the quarantine pest status of *Dagbertus* spp. to determine whether risk mitigation measures are warranted.

We appreciate the opportunity to clarify our earlier statement. While *Dagbertus* spp. are pests of avocados in Peru, they are highly unlikely to travel the pathway of commercial avocado fruit exported from Peru. According to Wysocki *et al.* (2002), pests of the family Miridae, which includes the *Dagbertus* genus, ''feed and insert their eggs on opening buds, leaves, flowers and small fruit. Attacks seem to especially affect flowers and recently set fruit, causing them to drop.'' Fallen immature fruit would not be marketable and thus would typically not be exported for commercial sale. The other plant parts mentioned would not be allowed to be included in shipments of avocados intended for export.

The information in Wysocki *et al.* (2002) is corroborated by the fact that, since 1985, *Dagbertus* spp. have been intercepted at U.S. ports of entry only 26 times from anywhere in the world, on any commodity, including flowers and other plant parts in addition to fruit.

The paper the commenter submitted does not identify a specific species of *Dagbertus* spp. as a pest. Additionally, none of the information we have about *Dagbertus* spp. indicates that we should further analyze any specific species within the genus. In the PRA accompanying this final rule, we have added *Dagbertus* spp. to the list of plant pests potentially affecting Hass avocados in Peru, but we have indicated in that list that these species will not follow the pathway of commercial fruit. We continue to consider *Dagbertus* spp. not to be quarantine pests.

One commenter examined the references in the PRA regarding the quarantine pest *Stenoma catenifer*, the avocado seed moth, and stated that we should have considered the work of Dr. Mark Hoddle and Dr. C.L. Hohmann in assessing the risk posed by that pest. The commenter stated that the omission of the work of these authors called into question whether the risk mitigation strategy we proposed for the avocado seed moth would be effective.

The avocado seed moth was rated as a high-risk pest, meaning that the references we consulted were sufficient to establish that the pest risk rating was the highest available. The work of Dr. Hoddle indicates that the avocado seed moths can cause extensive damage to Hass avocado crops, meaning that it supports our rating of the pest risk of the avocado seed moth as high. It also describes the seasonality of this pest, which is not relevant for Peru; avocados are only produced in one season in Peru, unlike Guatemala, the site of Dr. Hoddle's research, where avocados are produced year-round.

The two papers by Dr. Hohmann that the commenter cited discuss pesticide treatment and avocado seed moth infestation levels in avocados grown in Brazil (Hohmann *et al.*, 2000) and the placement of avocado seed moth eggs laid within the tree and in the avocados (Hohmann *et al.*, 2003). This work does not directly address the question of the appropriate pest risk rating for avocado seed moth. As appropriate, it will inform our operational workplan, which is required under the systems approach, and specifically the provisions of the workplan that deal with specific details of fruit cutting and sampling.

One commenter stated that *Ferrisia malvastra,* a mealybug, should not have been identified in the PRA as a quarantine pest. The commenter stated that the NPPO of Peru does not have records indicating that *F. malvastra* is present in Peru and that the reference (Ben-Dov *et al.*, 2003) that the PRA cites as evidence of the pest's presence in Peru also indicates that the pest is present in the United States.

The genus *Ferrisia* is comprised of several species which may be difficult to differentiate from one another (Gullan *et al.*, 2003). Soon after being described, *Heliococcus malvastrus*, a parthenogenic mealybug first described by McDaniel in 1962, was synonymized with *F. virgata* (McKenzie, 1967). The species was then separated, redescribed, and named *F. consobrina* (Williams and Watson, 1988), a name that was the junior synonym to *F. malvastra* (Ben-Dov, 2005). Hence, the observation noted in Williams & Granara (1992) records the presence of what is now considered *F. malvastra* in Peru.

The PRA notes that *F. malvastra* is present in the United States and further indicates that this pest is on the actionable pest list maintained by the Plant Protection and Quarantine program's National Identification Service. Our regulatory practice is to treat such pests as quarantine pests. We are making no changes to the quarantine pest status of *F. malvastra* in response to this comment.

One commenter stated that, between 2001 and 2005, the NPPO of Peru sampled a total of 12,505 Hass avocados attached to trees, finding no fruit infested with fruit flies. The commenter asserted that these data indicate that Hass avocados attached to trees are not hosts for the fruit flies identified in the PRA as quarantine pests: *Anastrepha fraterculus*, the South American fruit fly; *A. striata*, the guava fruit fly; and *Ceratitis capitata*, the Mediterranean fruit fly or Medfly.

While these data are not inconsistent with the assertion made by the commenter, the data are not sufficient to prove that assertion. (For example,

[3] To view the notice, the draft PRA, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0072.*

research would need to be done to determine the host status of avocados off the tree.) APHIS has developed a protocol for surveys and sampling to demonstrate that a fruit or vegetable is not a host of a specific pest. If the NPPO of Peru wishes to establish that Hass avocados in Peru are not hosts of these fruit flies, it can follow the APHIS protocol for doing so.

However, one of these fruit flies, *A. striata*, has been demonstrated not to infest Hass avocados, in Aluja *et al.* (2004). We do not currently consider Hass avocados to be a host of this pest; in a final rule published in the **Federal Register** on June 30, 2009 (74 FR 31154–31160, Docket No. APHIS–2006–0189), and effective on July 30, 2009, we removed restrictions related to the movement of Hass avocados from areas where certain *Anastrepha* spp. fruit flies (including *A. striata*) are present. Accordingly, we have removed *A. striata* from the pest list in the PRA that accompanies this final rule. It should be noted that *A. fraterculus* is still on the pest list, meaning that avocados from Peru will still need to be grown in places of production that have a low prevalence of *A. fraterculus*, as demonstrated by trapping, or that are free of that pest, as described in further detail later in this document.

Monitoring and Oversight

Two commenters addressed APHIS monitoring and oversight of the systems approach generally. One asked what the level of APHIS oversight would be in Peru, what level of expertise and resources would be dedicated to the systems approach by the NPPO of Peru, and whether periodic site visits were planned to verify program compliance. The second commenter, noting the RMD's statement that ''APHIS will be directly involved with SENASA [the NPPO of Peru] in monitoring and auditing implementation of the systems approach,'' stated that APHIS should provide on-site monitoring of all aspects of the systems approach throughout the harvest period and that a requirement for such APHIS monitoring should be included in the regulations.

The NPPO of Peru is obligated to fulfill its responsibilities under the systems approach as a signatory to the International Plant Protection Convention (IPPC). We have determined that it is not necessary for us to monitor program activities on site unless we have reason to believe that such activities may not be adequately mitigating pest risks. Thus, we do not plan to make periodic site visits. This is consistent with our practice in other import programs. We have conducted site visits as part of developing the systems approach; we found the NPPO of Peru to have the necessary resources and capacity to implement the systems approach. In addition, APHIS inspection of Hass avocados from Peru at the port of entry will serve as a check on the effectiveness of the systems approach.

Grove Sanitation

Paragraph (c) of proposed § 319.56–49 contained grove sanitation requirements. We proposed to require avocado fruit that has fallen from the trees to be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest.

One commenter stated that we should require grove sanitation to occur only during the harvest season, rather than beginning 2 months before harvest, and that we should require removal of fallen fruit every 15 days, rather than every 7 days. The commenter provided the following reasons:

- Hass avocados on the ground are poor hosts for fruit flies, and fruit attached to trees are not hosts for fruit flies.
- The avocado seed moth does not occur in the coast of Peru, where most avocado production in Peru is expected to occur.
- Hass avocado fruit fall to the ground because of a normal physiological characteristic of the avocado crop, not due to pest attacks.

We disagree with this commenter. Avocado fruit do, in fact, fall from trees due to pest attacks; indeed, unusual fruit drop is often a symptom of pest infestation. In addition, fallen avocado fruit are typically damaged and thus provide good host material for pests of avocados, including fruit flies; for this reason, we proposed to prohibit fallen avocado fruit from being included in field containers of fruit brought to the packinghouse to be packed for export. The occurrence of the avocado seed moth in only one area in Peru is not relevant to this provision of the systems approach, which targets all the quarantine pests.

The 7-day interval for removal of fallen fruit that we proposed is consistent with our regulations for the importation of Hass avocados from Mexico in § 319.56–30; the requirement to begin grove sanitation 2 months before harvest is consistent with other import programs that contain grove sanitation requirements (although not the Mexican program, since Hass avocados are exported from Mexico year-round). We have determined that this sanitation period and interval are necessary to provide appropriate protection against the introduction of quarantine pests via Hass avocados imported from Peru.

Mitigation Measures for A. fraterculus

In paragraph (d) of proposed § 319.56–49, we proposed to provide two options for mitigating the risk associated with the fruit flies *A. fraterculus*, the South American fruit fly, and *A. striata*, the guava fruit fly, in avocados from Peru: Establishment of an area free of *A. fraterculus* and *A. striata*, in accordance with our pest-free area regulations in § 319.56–5, or trapping to demonstrate that places of production have a low prevalence of *A. fraterculus* and *A. striata*.

Although the January 2009 PRA identified both *A. fraterculus* and *A. striata* as potential pests of Hass avocados from Peru, Hass avocados are known to be poor hosts for *Anastrepha* spp. fruit flies in general. However, the risk that these fruit flies will infest Hass avocados increases if their population is high in areas where avocados are produced. Trapping to demonstrate an area of low pest prevalence was proposed as an appropriate mitigation for these two fruit flies.

As noted above, we have removed *A. striata* from the pest list in the PRA accompanying this final rule, meaning that these requirements apply only with regard to *A. fraterculus* in this final rule.

One commenter stated that allowing the NPPO of Peru to define areas of low pest prevalence without direct APHIS oversight would not be prudent. Perhaps, the commenter stated, the NPPO of Peru could define areas of low pest prevalence after several years of program implementation without incident, but without a proven track record, the risks would be too great to place an untried systems approach in the hands of government officials in the exporting country. The commenter recommended that the final rule include provisions for mandatory monitoring of fruit fly trapping by APHIS.

The commenter did not identify a specific risk associated with oversight of the fruit fly trapping by the NPPO of Peru. In import programs that involve fruit fly trapping, we do not typically require APHIS oversight of the trapping itself. Instead, we require in the regulations that records of the fruit fly trapping be kept and made available to APHIS. We included in the proposed rule requirements for the NPPO of Peru to keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request. Fruit fly trapping itself is

conducted in accordance with the International Atomic Energy Agency (IAEA) guidelines for fruit fly trapping, which are internationally recognized and well-understood. By auditing the fruit fly trapping records, we can determine whether the trapping is being conducted consistent with the IAEA guidelines. Records of finds of fruit flies in the trapping would also indicate whether the trapping procedures needed to be adjusted. As noted earlier, we have conducted site visits as part of developing the systems approach; we found the NPPO of Peru to have the necessary resources and capacity to implement the systems approach, including fruit fly trapping. We are making no changes to the proposed rule in response to this comment.

This commenter also asserted that the proposed rule did not provide adequate mitigations for the risk associated with *A. fraterculus* and *A. striata*, stating that we should add to the final rule provisions prohibiting the distribution of Hass avocados from Peru to areas of the United States where fruit flies could become established. The commenter stated that *A. fraterculus* is considered the most important fruit fly pest in South America, with a very wide range of hosts ranging from tropical to temperate species. *A. fraterculus* exhibits greater morphological variation than related species, and there is strong evidence that a complex of cryptic species is included in the nominal species *A. fraterculus*, of which the South American variety may be more aggressive and dangerous.

The commenter stated that provisions prohibiting the distribution of Hass avocados from Mexico to certain areas of the United States were only removed when research was completed establishing that Hass avocados were not hosts of the *Anastrepha* species present in Mexico, but that *A. fraterculus* was not included in this research, in part because of evidence that the Mexican morphotype differs significantly from the South American morphotype. The commenter stated that, until and unless field research in Peru demonstrates the non-susceptibility of Hass avocados to attack by *A. fraterculus* and *A. striata*, provisions limiting the distribution of Hass avocados from Peru should be imposed.

We agree with the commenter that *A. fraterculus* is likely composed of ''sibling species,'' as discussed in the PRA, and we also agree that the host status of Hass avocados for *A. fraterculus* is uncertain. However, the commenter did not provide any evidence that we did not consider in the PRA when discussing the host status of Hass avocados for *A. fraterculus*, nor did the commenter point out any evidence suggesting that some species of *A. fraterculus* exhibit a greater preference for Hass avocados than others. As stated in the PRA, a review of the current literature suggests that under most circumstances, Hass avocados do not serve as hosts for *Anastrepha* spp. The PRA ultimately concluded that, given the available evidence, *A. fraterculus* could be considered a pest of avocado in Peru. This is consistent with allowing the importation of Hass avocados from Peru that originate in an area of low pest prevalence for *A. fraterculus* and requiring that Hass avocados be inspected for *A. fraterculus* before being exported to the United States.

The research to demonstrate the non-susceptibility of Hass avocados to attack by *A. fraterculus* that the commenter recommends would be necessary if we had proposed to require no mitigations for *A. fraterculus;* instead, we proposed to require Hass avocados from Peru to come from areas that are free of *A. fraterculus* or areas that have been demonstrated by trapping to have a low prevalence of *A. fraterculus*.

As noted earlier, we have determined that *A. striata* is not a pest of Hass avocados, based on research to which the commenter alludes.

The commenter also recommended that we require the storing of ''voucher specimens'' of *A. fraterculus* in 95 percent alcohol, to facilitate genetic analyses conducted later in time and aimed at differentiating sibling/cryptic species, some of which may exhibit a stronger preference for avocados.

If a sibling or cryptic species of *A. fraterculus* that has a stronger preference for Hass avocados were to emerge in Peru, we would become aware of it through fruit fly trapping, fruit inspection, and general monitoring, and we would impose additional restrictions on the importation of Hass avocados from Peru as appropriate. Therefore, it is not necessary to require the specimen storage that the commenter suggests.

Mitigation Measures for Medfly

Paragraph (e) of proposed § 319.56–49 provided three options for mitigating the risk associated with Medfly in avocados from Peru: Establishment of an area free of Medfly, trapping to demonstrate that places of production are free of Medfly, or treatment. With regard to trapping, we proposed to require that, when traps are serviced, if any Medfly are found, 10 additional traps be deployed in a 0.5-km^2 area immediately surrounding all traps where Medfly was found to determine whether a reproducing population is established. If any additional Medfly are found within 30 days of the first detection, the affected place of production would be ineligible to export avocados without treatment for Medfly until the source of the infestation is identified and the infestation is eradicated. APHIS would have to concur with the determination that the infestation has been eradicated.

One commenter expressed concern about using trapping to demonstrate place of production freedom from Medfly, noting that allowing pest-free places of production would be unprecedented unless all of the export groves in Peru are greater than 0.5 km^2 and are surrounded by buffer zones. The commenter stated that international standards for area freedom from Medfly should continue to be used.

We agree with the commenter's concern. Peru's places of production do not all meet the conditions noted by the commenter, thus making determining place of production freedom from Medfly operationally difficult. Therefore, this final rule does not include trapping to establish a pest-free place of production as a mitigation option for Medfly. We are providing only for the establishment of pest-free areas and treatment as mitigation options in paragraph (e). We are also making several changes elsewhere in the proposed regulatory text to remove references to pest-free places of production as a mitigation option for Medfly.

Surveys for the Avocado Seed Moth

In paragraph (f) of proposed § 319.56–49, we proposed to require surveys to demonstrate that registered places of production are free of the avocado seed moth. Specifically, we proposed to require Peruvian departamentos [4] in which avocados are grown for export to the United States to be surveyed by the NPPO of Peru at least once annually, no more than 2 months before harvest begins, and found to be free from infestation by the avocado seed moth. We stated that an annual survey is appropriate for the avocado seed moth because the pest has limited mobility; the results of a survey conducted no more than 2 months before harvest would indicate freedom from the

[4] In Peru, the departamento is the first level of political subdivision within the country, similar to the U.S. State. However, because Peru is about five-sixths of the size of Alaska and there are 25 departamentos, a typical departamento is smaller than most States.

avocado seed moth for the entire harvest period.

Two commenters addressed the fact that we proposed to require an annual rather than a semiannual survey for the avocado seed moth, noting that the regulations for the importation of Hass avocados from Mexico in § 319.56–30 require semiannual surveys for the avocado seed moth (and other seed pests), once during the wet season and once during the dry season. One commenter noted that, while the moth does have limited mobility, other factors may have greater bearing on the timing of surveys. The commenter cited field work by Dr. Mark Hoddle in Guatemala in which it was observed that seasonal transitions from humid to dry climatic conditions are accompanied by an increase in the detection of the avocado seed moth in avocado fruit. This commenter recommended that we require semiannual surveys for the avocado seed moth to provide a more accurate picture of the risk posed by that pest.

We have determined that semiannual surveys for the avocado seed moth are not necessary because the climatic shifts from wet to dry seasons that occur in Guatemala and Mexico do not occur in Peru's avocado production areas; rather, Peru's avocado production areas remain arid throughout the year. Additionally, Peru's avocado production areas are separated by desert, further inhibiting the spread of the moth between places of production. These factors indicate that an annual survey is adequate to detect the avocado seed moth.

As part of the departamento surveys, we proposed to require the NPPO of Peru to cut and inspect a biometric sample of fruit at a rate determined by APHIS. We stated that we expect the biometric sample to include about 300 fruit from each place of production.

One commenter recommended that we include more specificity in the regulations with regard to fruit cutting, stating that the NPPO of Peru should not be in a position to negotiate with APHIS on a fruit cutting sampling plan given the importance of the avocado seed moth as a pest. The commenter stated that the fact that no specific sample size would be included in the regulations provides little assurance that the survey will protect against the introduction of the avocado seed moth.

As stated in the proposal, the rate at which the fruit will be sampled will be determined by APHIS; it will not be subject to negotiation, other than the sharing of data that informs all determinations of appropriate biometric sample rates. The sample rate will detect a pest prevalence with a confidence level that is consistent with other import programs in which surveys and inspection are used to detect high-risk pests. APHIS can adjust the rate if necessary to provide further security against pest risks. The number of fruit to be sampled will be determined based on this biometric sample rate and will be contained in the workplan developed by the NPPO of Peru and approved by APHIS; the workplan is required under the systems approach. Given this, it is not necessary to include a specific number of fruit to be sampled in the regulations.

If one or more avocado seed moths was detected in the annual survey, we proposed to require the affected place of production to be immediately suspended from the export program until appropriate measures to reestablish pest freedom, agreed upon by the NPPO of Peru and APHIS, have been taken. These measures could include further delimiting surveys, appropriate pesticide treatments, or removal of infested host material.

One commenter noted that we proposed to require surveys for the avocado seed moth to be conducted at the departamento level, but to suspend places of production when an avocado seed moth is found. This commenter stated that we should require suspension of the affected departamento for at least the remainder of the export season during which the avocado seed moth is detected, similar to the requirements in the regulations for the importation of Hass avocados from Mexico in § 319.56–30. The commenter also recommended that we amend the regulations to indicate that finding the avocado seed moth during any monitoring or inspection activity, not just the annual survey, would result in the suspension of the affected departamento.

Another commenter praised the approach in the proposed rule of suspending only the affected place of production, rather than the entire departamento, upon detection of the avocado seed moth. This commenter recommended that we change the regulations for the importation of Hass avocados from Mexico to match the approach described in the proposed rule.

The NPPO of Peru conducts its surveys for avocado seed moth at the departamento level; we proposed to recognize this survey methodology by requiring the survey to be at the departamento level. As noted earlier, the limited mobility of the pest, combined with the continual arid climate of Peru's avocado production areas and their separation by desert, mean that the avocado seed moth will not move very far under its own power and is unlikely to move between places of production. In addition, if the pest is present in places of production close to a place of production in which the avocado seed moth has been found, the surveys would find it in those nearby places of production, and we would suspend those places of production as well. Given this information, it is appropriate to suspend from the export program only the places of production in which the avocado seed moth has been found, rather than the entire departamento.

We agree with the first commenter that any detection of an avocado seed moth, including detections during monitoring and inspection other than the annual survey, should result in suspension of the affected place of production. We have amended the regulatory text in this final rule to include detections during any monitoring or inspection activity as a reason for suspension.

We have evaluated the similar provisions of the regulations for the importation of Hass avocados from Mexico and have determined that it is not necessary to suspend the entire municipality in which an avocado seed pest has been found. We are preparing a proposed rule that would amend those regulations accordingly.

One commenter recommended two additional mitigations for the risk posed by the avocado seed moth. One, which the commenter presented as an additional, precautionary step until the incidence of avocado seed moth in the production areas of Peru is better understood, was to hold a random sample of fruit (perhaps 300 per departamento) under controlled conditions to test for emergence of adult moths. Although this would not prevent potentially infested fruit picked at the same time from entering the commercial pathway, the commenter stated that the observance of adult moths could still be used to suspend shipments once an infestation became evident, thereby reducing overall risk.

The other mitigation the commenter suggested was to prohibit the importation or distribution of Hass avocados from Peru to the State of California, to offset what the commenter characterized as the poor reliability of fruit cutting to detect larval infestations of the avocado seed moth.

The NPPO of Peru has been conducting surveys for the avocado seed moth for years, and we have visited Peru's avocado production areas to better understand the pest conditions there. We therefore disagree with the

commenter's suggestion that the incidence of avocado seed moth in the growing areas of Peru is not well understood. We also disagree with the commenter's assertion that fruit cutting is an unreliable means of detecting larval infestations of avocado seed moth. Surveying and cutting techniques can be designed to reduce uncertainties, and our selection of a biometric sampling rate will take any remaining uncertainties into account. Fruit cutting has been successful at preventing the introduction of avocado seed pests from Mexico into the United States through the importation of Hass avocados. Therefore, we have determined that the additional mitigations suggested by the commenter are not necessary to prevent the introduction of avocado seed moth into the United States via the importation of Hass avocados from Peru.

Sealing Containers

Paragraph (h) of proposed § 319.56–49 contained packinghouse requirements. To safeguard consignments of avocados to be exported from Peru to the United States, proposed paragraph (h)(4) would have required the fruit to be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards would have had to remain intact until arrival in the United States.

Two commenters noted that the proposed rule did not include a requirement to seal containers while in transit to the United States. One of these commenters encouraged us to require the use of cargo seals to enhance the phytosanitary integrity of consignments during transit, to provide evidence of any container breaches, and to prevent cross-contamination from boxes of uncertified avocados or other potentially infested fruit. The other commenter also noted that the proposed rule did not include repackaging requirements for containers of Hass avocados from Peru.

We agree with the commenters that seals are useful to ensure the phytosanitary integrity of consignments. We typically require the use of such seals in the bilateral workplan that provides specific details on how the export program will be implemented in the exporting country. We will do so for avocados from Peru. Similarly, we will include repackaging requirements in the bilateral workplan.

Identification of Shipments

Proposed paragraph (h)(5) provided that shipping documents accompanying consignments of avocados from Peru that are exported to the United States would have to include the official registration number of the place of production at which the avocados were grown and would have to identify the packing shed or sheds in which the fruit was processed and packed, and that this identification would have to be maintained until the fruit is released for entry into the United States.

Two commenters recommended that we additionally require individual cartons of avocados to be labeled with this information. (One of these commenters also recommended that we require individual avocado fruit to be so labeled as well.) The commenters stated that this information would allow for traceback to and suspension of individual places of production and packinghouses in the event that a pest is discovered in the United States, rather than having to suspend all avocado exports from Peru. The commenters stated that this requirement would thereby isolate the problem without unnecessarily disrupting the flow of trade.

We agree with these commenters that labeling cartons and fruit with place of production and packinghouse registration numbers would allow for traceback to specific places of production or packinghouses and would thus help to continue the flow of trade if a pest is discovered. We typically require in the bilateral workplan that such information be included on individual cartons. We will do so for avocados from Peru. As the commenters noted, an exporting country has an incentive to provide this information in order to minimize unnecessary trade disruptions in the event of a pest detection.

Inspection

Paragraph (i) of proposed § 319.56–49 provided for inspection of a biometric sample of fruit from each place of production by the NPPO of Peru at a rate to be determined by APHIS.

One commenter stated that the regulations should limit the amount of discretion granted to the NPPO of Peru in this most critical aspect of the systems approach, providing a specific sampling plan. Another commenter stated that the regulations for the importation of Hass avocados from Mexico require specific numbers of fruit to be cut for inspection prior to export and at the port of first arrival in the United States; this commenter praised the approach in the proposal and asked that the specific fruit cutting requirements be removed from the Mexican Hass avocado regulations.

As we proposed, the sampling rate for this inspection will be determined by APHIS. The general sampling plan will be contained in the bilateral workplan, which APHIS must approve in order for Peru to be able to export avocados. Therefore, the NPPO of Peru will not have sole discretion in setting a biometric sample rate or developing a sampling plan. The regulations provide mechanisms by which APHIS will direct this activity.

In fact, with respect to the Mexican Hass avocado import program, the requirement to cut specific numbers of fruit for inspection prior to export and at the port of first arrival is contained in the bilateral workplan required to be developed under paragraph (c) of § 319.56–30. Paragraph (c)(3)(iv) of § 319.56–30, which contains the pre-export inspection requirement for Hass avocados from Mexico, refers to a biometric sample, at a rate determined by APHIS. Paragraph (h) of that section, which contains the requirement for inspection at the port of first arrival, does not refer to any specific sampling mechanism. We will use the workplan in a similar manner in the import program for Hass avocados from Peru.

In addition, it should be noted that Hass avocados from Peru will be inspected at the port of entry into the United States, providing a check on the efficacy of the inspection in Peru.

One commenter noted that systems approaches, such as the one we proposed for the importation of Hass avocados from Peru, are more complex in nature than post-harvest treatments and require a higher level of expertise and oversight. This commenter asked whether there would be a higher level of inspection than normal of avocados from Peru at ports of entry to verify that the avocados are free of pests.

We do not plan to inspect at a higher level than our usual level, unless evidence indicates that there may be a problem with the implementation of the systems approach. As noted earlier, we have found the NPPO of Peru to have the necessary resources and capacity to implement the systems approach.

Inconsistencies With the Regulations for Importing Hass Avocados From Mexico in § 319.56–30

Four commenters noted that the provisions of the proposed rule and the regulations for importing Hass avocados from Mexico in § 319.56–30 were inconsistent in various ways. Some of these comments have been addressed earlier in this document. The remaining comments are addressed here.

One commenter stated that it was only over a period of years that APHIS relinquished oversight of Hass avocado growers in Mexico to the Mexican NPPO, and recommended that APHIS

take a similar path with the NPPO of Peru. In contrast, two commenters stated generally that the phytosanitary track record of the Mexican Hass avocado import program over the past 11 years warrants at least no more burdensome treatment than APHIS proposed to provide for Hass avocados imported from Peru. One commenter recommended that several specific provisions of the regulations for the importation of Hass avocados from Mexico be changed to be consistent with similar provisions in the proposed rule.

Since the establishment of the Mexican Hass avocado import program, APHIS has accumulated experience with how large-scale systems approach programs such as the Mexican program work, which in turn has given us better information on the appropriate level of oversight for such programs. As stated earlier, we have found the NPPO of Peru to have the necessary resources and capacity to implement the systems approach, and, as a signatory to the IPPC, the NPPO of Peru is obligated to fulfill its responsibilities under the systems approach.

The specific differences between the proposed rule and the Mexican Hass avocado regulations brought up by the last commenter are addressed below.

The commenter stated that, because area freedom is not required, APHIS seems inclined to accept that the Hass avocado is a poor host for *A. fraterculus* and Medfly without any supporting documentation. The commenter stated that APHIS should remove fruit fly-related restrictions for Mexican Hass avocados before allowing the same commodity into the United States from another country under fewer restrictions.

Our analysis establishing that Hass avocado is a poor host for *A. fraterculus* is documented in the PRA; the commenter did not provide any comments specific to that analysis. With regard to fruit flies, as noted earlier, we published a June 2009 final rule removing restrictions related to the movement of Hass avocados from areas where certain *Anastrepha* spp. fruit flies (including *A. striata*) are present, including Mexico. The PRA did not determine that Hass avocados are a poor host for Medfly; as discussed earlier, this final rule requires Hass avocados from Peru to be produced in an area that the Administrator has determined to be free of Medfly or to be treated for Medfly.

The commenter noted that we proposed to allow the whole country of Peru to export avocados to the United States, but exports from Mexico are limited to approved municipalities in only one State, Michoacan.

Other States in Mexico have different pests and different pest densities than Michoacan, which is less warm and humid than surrounding avocado production areas in Mexico. Mitigating the pest risk associated with Hass avocados produced in States other than Michoacan would require the development of a different systems approach. We have not received a formal request from the Government of Mexico to do so.

The commenter noted that we did not propose to require personnel conducting trapping and pest surveys to be hired by the NPPO of Peru. Instead, we proposed to require any personnel conducting trapping and pest surveys to be trained and supervised by the NPPO of Peru. The commenter requested that we remove the requirement that the Mexican NPPO hire its personnel conducting trapping and pest surveys, which is contained in § 319.56–30(c).

We have evaluated this provision of the regulations for the importation of Hass avocados from Mexico and have determined that it is not necessary for such personnel to be hired by the Mexican NPPO. We are preparing a proposed rule that would amend those regulations accordingly.

The Mexican Hass avocado import regulations require APHIS to be directly involved with the Mexican NPPO in the monitoring and supervision of its activities. We did not propose to require direct monitoring and supervision for Hass avocados from Peru. The commenter stated that the strong record of success of the Mexican Hass avocado import program provides ample reason to remove the requirement for direct monitoring and supervision from that program.

We acknowledge the success of the Mexican Hass avocado import program, as noted earlier in this document. We plan to reevaluate this provision of the regulations and, if warranted, issue a proposal to change it.

The commenter noted that there is no specific requirement for inspection of Hass avocados imported from Peru.

Under the general fruits and vegetables regulations in § 319.56–3, APHIS is authorized to inspect all fruits and vegetables imported into the United States. It is thus not necessary to include specific provisions for port-of-entry inspection for Hass avocados from Peru.

Economic Issues and Comments on the Economic Analysis

Four commenters opposed the proposed rule for economic reasons, stating that domestic avocado farm profit margins are already low due to adverse weather and other foreign competition. They cited specific concerns. One commenter stated that the vast majority of California avocado growers operate small family farms, with 5- to 20-acre groves, and would be adversely affected by the proposal. One commenter stated that imports should be limited to things or specialties that cannot be produced in the United States, as buying close to home helps to improve the U.S. economy and reduces carbon emissions associated with global climate change while providing better-tasting fruit to the consumer.

Another commenter mentioned that the recent economic downturn had affected domestic avocado farmers' personal wealth and access to credit. This commenter also noted that Peru's avocado growing season is from May to September, meaning that the effects on the domestic market would be seasonal, and stated that the proposal should not be finalized in order to promote sustainable, long-term, non-seasonal employment. Finally, this commenter stated that the American Recovery and Reinvestment Act of 2009 exhibits protectionism of U.S. products and employment as a policy to aid the U.S. economy, and stated that the proposed rule should reflect this policy.

The Plant Protection Act (7 U.S.C. 7701 *et seq.*), the authorizing statute for APHIS' plant-health-related activities, authorizes the Secretary of Agriculture to prohibit or restrict the importation of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States. We have determined that the measures in the systems approach we proposed, amended as described earlier, are sufficient to prevent the introduction of any plant pests. The factors cited by the commenters are not within our decisionmaking authority under the Act.

The initial regulatory flexibility analysis (IRFA) we prepared for the proposed rule acknowledged that the majority of U.S. producers and packers of fresh avocados are considered to be small entities as defined by Small Business Association size standards. However, we have estimated that U.S. consumption (demand) is more than double U.S. production of avocados, indicating that consuming only U.S. avocados would create a shortage of avocados on the U.S. market. Projected imports of avocados from Peru would likely decrease the U.S. avocado price by a maximum of 4 percent, assuming no displacement of other imports.

Furthermore, we have concluded that it is likely that at least a portion of the projected imports from Peru would displace imports from other foreign sources when fresh avocado supplies are low and demand is high, meaning that price effects would likely be smaller than 4 percent.

The Office of Management and Budget designated the proposed rule as not significant under Executive Order 12866. One commenter stated that this rule should not have been designated not significant, saying that the rule runs counter to the interests of U.S. avocado growers and does little to assure the health and safety of U.S. consumers.

Executive Order 12866 provides specific criteria for the Office of Management and Budget to use in determining the appropriate designation of a rule. This commenter did not provide any reasons why the rule should have been designated significant under Executive Order 12866. In addition, the commenter did not specify how the proposed rule should be changed to assure the health and safety of U.S. consumers. This final rule will allow the importation of Hass avocados from Peru into the United States while continuing to provide protection against the introduction of quarantine pests.

One commenter stated that allowing the importation of Hass avocados from Peru could only adversely affect producer prices while having a negligible effect on the consumer price.

As indicated in the IRFA prepared for the proposed rule, we have determined that estimated price effects and welfare impacts are highly sensitive to displacement and import levels; however, given the conservative assumption of zero displacement, imports from Peru at an estimated 50 percent more than current projections (28,500 metric tons), and short-run supply and demand elasticities, we have concluded that the overall net changes in welfare of allowing the importation of fresh Hass avocados from Peru under the specified systems approach are likely to be positive. This indicates that any decline in producer welfare would be exceeded by a gain in consumer welfare, primarily in the form of lower prices.

One commenter stated that the demand and supply elasticities used in calculating changes in producer and consumer welfare in the IRFA accompanying the proposed rule should be modified based on more recent data that reflect the current state of the U.S. economy. This commenter noted that our elasticity projections originated from a 2003 publication that used data from 1998 and stated that demand for avocados, a product with no substitutes that is a relative mainstay in the diet of many Americans, will be inherently inelastic, meaning that price changes have relatively less effect on the amount demanded. However, the commenter stated, a new supplier of lower-priced avocados, coupled with American consumers' heightened awareness to price changes for relatively common produce (due to the poor economic climate), will cause the demand for avocados to become much more elastic and responsive to price changes than reflected in the elasticities used in the IRFA. Accordingly, the commenter recommended that we use a greater elasticity of demand value for projecting net welfare gains and that we use these elasticities to measure the effects on suppliers.

There is no published evidence to suggest that avocados have emerged as a ''mainstay'' of the U.S. diet. Rather, APHIS believes that avocados remain a specialty item that has become more popular in American culture over the last two decades. Furthermore, the state of the economy is not a major determinant of the price elasticity of demand for a good or service; however, consumers in a recession are more likely to reevaluate goods and services in terms of necessity or luxury. Goods and services deemed to be necessities are typically less elastic while goods determined to be luxuries are typically more elastic. A change in the price of fresh avocados may cause a consumer to reconsider purchasing avocados in times of economic downturn. The price elasticity of demand of -1.2 that we used in the IRFA is a relatively elastic price elasticity of demand that reflects that consumers are relatively sensitive to changes in prices of fresh avocados.

It should be noted that, for the analysis, we used two sets of supply elasticities to measure both short-term and long-term welfare effects on producers as a result of the projected increase in imports of fresh avocados to fully capture potential changes in the market.

One commenter noted that several commenters who supported the rule stated that U.S. consumption of avocados will increase by 15 to 20 percent in 2009 and stated that such a rise in consumption is likely an overstatement based on data not reflecting the current financial condition of U.S. consumers.

Domestic consumption of fresh avocados has nearly doubled over the last decade, with an overall average increase in 10 percent per season. Although demand has been estimated to be price-elastic and domestic consumption has declined over one season, the overall trend indicates that market demand is likely to experience long-term growth. In any case, our analysis is not dependent on such projections.

One commenter stated that, while the IRFA accompanying the proposed rule framed displacement around how imports from Peru will displace Mexican and Chilean imports, the more appropriate question is how much of the domestic supply will be displaced. The commenter asserted that more of the domestic supply will be displaced than the imports from Mexico and Chile, meaning a negative impact on an already depressed market of domestic suppliers.

The commenter provided no data to support this assertion, and published data [5] support our analysis. Domestic consumption of fresh avocados declined by 10 percent during the 2007–2008 season, while fresh domestic production increased by 25 percent and U.S. exports of fresh avocados increased by 47 percent. During this same season, imports from foreign sources decreased by nearly 24 percent over the previous season, suggesting that some displacement of foreign sources occurred during this period.

Miscellaneous Changes

In this final rule, we are correcting an error in proposed paragraph (b), which referred incorrectly to the NPPO of Peru verifying that growers are complying with the requirements of paragraphs (c) and (f) of § 319.56–49. Paragraph (f) contains the requirements for surveys for the avocado seed moth; we had intended to refer to paragraph (g), which contains harvesting requirements, and we have corrected the error in this final rule.

In addition, the proposed requirement in paragraph (b)(4) referred to ''groves,'' rather than places of production, which was the term used in the rest of the proposed regulations. We are changing proposed paragraph (b)(4) to refer to places of production in this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

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Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

The NPPO of Peru requested market access for commercial shipments of fresh Hass avocados into the continental United States for domestic consumption. APHIS is finalizing a proposed rule that was published on January 7, 2009, to grant this request provided Peru produces its Hass avocados in accordance with a systems approach that will include registration and monitoring of places of production and packinghouses; grove sanitation; pest-free areas or trapping for the South American fruit fly; pest-free areas or treatment for Medfly; surveys for the avocado seed moth; and inspection for quarantine pests by Peru's NPPO. Hass avocados from Peru will also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the avocados have been inspected for quarantine pests and were grown and packed in accordance with the requirements of this final rule. These mitigations will allow for the importation of Hass avocados from Peru into the United States while providing protection against the introduction of quarantine pests. Application of the mitigation measures in granting Peru's request is consistent with World Trade Organization agreements that sanitary and phytosanitary regulatory restrictions should be based on scientific evidence and applied only to the extent necessary to protect human, animal, and plant health.

The Regulatory Flexibility Act of 1980 requires agencies to evaluate the potential effects of proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the Act allows an agency to certify a rule if the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. APHIS has determined this to be the case for this final rulemaking, and this analysis provides the factual basis for such certification in this case.

The United States is the world's leading importer of all fresh Hass avocados, with imports between 60 and 75 percent of total world exports annually. Japan and Canada rank a distant second and third with combined imports of 18 to 20 percent annually. Mexico and Chile account for approximately 50 and 30 percent, respectively, of U.S. imports of Hass avocados.[6] The United States exports less than 1.5 percent of its production, whereas U.S. consumption is more than double production. While the final rule is consistent with World Trade Organization agreements that sanitary and phytosanitary regulatory restrictions should be based on scientific evidence and applied only to the extent necessary to protect human, animal, and plant health, it will have the added benefit in meeting an average annual increase in domestic market demand for Hass avocados.

APHIS received several comments based on the findings of the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule; however, after careful consideration none was found to contain significant issues that would require a reevaluation of the proposed regulations. We address these comments in detail in the Background section of this document.

Impact on Small Entities

The final rule may directly affect U.S. domestic producers of Hass avocados, as well as firms responsible for packing and shipping these commodities for domestic and foreign markets. We find that a substantial number of these businesses are small entities, according to Small Business Administration (SBA) guidelines and based on *2002 Census of Agriculture* data. SBA classifies producers within the category Other Non-Citrus Fruit Farming (NAICS 111339) having annual sales of not more than $750,000 as small entities. California is the largest U.S. producer of avocados, accounting for approximately 86 percent of all production and nearly all Hass avocado production. According to the *2002 Census of Agriculture Summary and State Data* report, there were a total of 6,251 avocado farms in the United States in 2002, with California farms representing approximately 85 percent (or 4,801 farms) of this total.[7] Of the remaining farms, 839 are located in Florida, 601 are located in Hawaii, and 10 are located in Texas.

APHIS does not have information on the size distribution of the total U.S. avocado producers, but according to the *2002 Census of Agriculture,* there were a total of 95,680 Fruit and Tree Nut farms (NAICS 1113) in the United States in 2002.[8] Of this number, nearly 99 percent had annual sales in 2002 of less than $500,000, which is well below the SBA's small-entity threshold of $750,000.[9] While cash receipts by size for avocado farms were not reported in the *2002 Census of Agriculture,* it is reasonable to assume that most of the 6,251 domestic avocado farms currently in operation qualify as small entities.

[6] Global Trade Atlas data.

[7] National Agricultural Statistics Service (NASS), United States Department of Agriculture (USDA), ''United States: Summary and State Data, Volume 1,'' 2002 Census of Agriculture, issued June 2004.

[8] This number includes farms producing fruit and tree nut varieties and those specifically producing avocados.

[9] Source: SBA and *2002 Census of Agriculture.*

Avocado packing and shipping establishments, those engaged in postharvest crop activities (NAICS 115114), are also expected to be small according to SBA guidelines. The small-entity standard for packinghouses is $6.5 million or less in annual receipts. In 2004, the California Avocado Commission reported that 51 companies were active handlers of California avocados at the end of October 2003. Of this number, 18 companies had first sales of avocados of under $10,000; 8 companies had avocado sales of between $10,000 and $49,999; 5 companies had sales from $50,000 to $99,999; 5 companies had sales from $100,000 to $499,999; 2 companies had sales from $500,000 to $999,999; 2 companies had sales from $1 million to $4,999,999; 1 company had sales from $5 million to $9,999,999; 2 companies had sales from $10 million to $19,999,999; 6 companies had sales from $20 million to $49,999,999; and 2 companies sold over $50 million worth of California avocados. This information indicates that 40 of the 51 firms are small entities. We conclude that the majority of the handlers that will be affected by the rule are small entities.

According to the Peru Avocado Growers Association, exporters expect to ship approximately 19,000 metric tons of fresh Hass avocados per year from Peru to the United States. The projected imports are roughly 5 percent of U.S. fresh avocado consumption and 11 percent of U.S. fresh avocado production. It is highly likely, however, that at least a portion of the projected imports from Peru will displace imports from other foreign sources when fresh avocado supplies are low and demand is high. If no displacement were to occur, projected fresh avocado imports from Peru will represent an increase in fresh avocado imports of 9 percent. The extent to which displacement occurs is a critical factor affecting the size of potential impacts of this final rule, but, even under the conservative estimate of zero displacement, overall net benefits are expected to be positive. In the analysis of expected price and welfare impacts of the IRFA, we examined effects of the projected level of fresh avocado imports from Peru if none, 11 percent, or 24 percent of the imports were to displace fresh avocado imports from other countries. We compared the price and welfare effects for two sets of demand and supply elasticities and quantified the welfare effects. The higher the level of displacement of imports from other countries, the smaller the price decline, and the smaller the welfare losses for producers and welfare gains for consumers. In all cases, the model results showed positive net benefits overall.

In addition to considering the effects for three possible levels of displacement of fresh avocado imports from other sources, we analyzed the sensitivity of the results to different quantities of fresh Hass avocados imported from Peru. We calculated the price and welfare effects assuming the avocado imports to be 50 percent less or 50 percent greater than the 19,000 metric tons projected by Peru. Given the linearity of the model used to assess welfare impacts, this sensitivity analysis yielded changes in welfare that are proportional to the assumed levels of imports. Reasonably, some portion of the imports from Peru will likely displace existing imports, and price and welfare effects of the rule for U.S. entities will be thereby moderated. The results of the sensitivity analysis indicate that consumers may be positively affected and U.S. producers may be negatively affected by a decline in market prices ranging between 1 percent and 6 percent, depending on the price elasticities of demand and supply and displacement ranging from 11 to 24 percent of fresh avocado imports from Peru. Net welfare gains for these same levels of displacement range from $2.9 million to $17.8 million. In all of the modeled scenarios, consumer gains resulting from the final rule were found to exceed U.S. producer losses. Nevertheless, producer prices are estimated to continue to decline in the long run, which may continue to negatively impact producer revenues. As producer receipts decline, so shall revenues for avocado handlers. As domestic demand experiences an average annual increase for this specialty product, the modeled results for all scenarios in the long run showed positive net benefits overall.

We conclude that, while small producing entities will be affected by the final rule, the overall net changes in welfare of allowing the importation of fresh Hass avocados from Peru under the specified systems approach are likely to be positive given the sizable domestic demand for Hass avocados given the available domestic supply.

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 allows Hass avocados to be imported into the United States from Peru. State and local laws and regulations regarding avocados imported under this rule will be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings 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 importation of Hass avocados from Peru under the systems approach required by this final rule 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.[10] 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.**

[10] Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0126*. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0355.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects

7 CFR Part 305

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

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

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

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 305.2, the table in paragraph (h)(2)(i) is amended by adding in alphabetical order, under Peru, a new entry for ''Avocado'' to read as follows:

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule
*	*	*	*
Peru.			
*	*	*	*
	Avocado	*Ceratitis capitata*	MB T101–c–1, MB&CT T108–a–1, MB&CT T108–a–2, MB&CT T108–a–3, CT T107–a.
*	*	*	*

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 4. A new § 319.56–50 is added to read as follows:

§ 319.56–50 Hass avocados from Peru.

Fresh Hass variety avocados (*Persea americana* P. Mill.) may be imported into the continental United States from Peru only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Anastrepha fraterculus* (Wiedemann), the South American fruit fly; *Ceratitis capitata* (Wiedemann), the Mediterranean fruit fly; *Coccus viridis* (Green), the green scale; *Ferrisia malvastra* (McDaniel), a mealybug; and *Stenoma catenifer* Walsingham, the avocado seed moth.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Peru must provide a workplan to APHIS that details the activities that the NPPO of Peru will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The NPPO of Peru must also establish a trust fund in accordance with § 319.56–6.

(2) The avocados must be grown at places of production that are registered with the NPPO of Peru and that meet the requirements of this section.

(3) The avocados must be packed for export to the United States in packinghouses that are registered with the NPPO of Peru and that meet the requirements of this section.

(4) Avocados from Peru may be imported in commercial consignments only.

(b) *Monitoring and oversight.* (1) The NPPO of Peru must visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the requirements of paragraphs (c) and (g) of this section and follow pest control guidelines, when necessary, to reduce quarantine pest populations. If trapping is conducted under paragraph (d)(2) of this section, the NPPO of Peru must also verify that the growers are complying with the requirements in those paragraphs and must certify that each place of production has effective fruit fly trapping programs. Any personnel conducting trapping and pest surveys under paragraphs (d)(2) or (f) of this section must be trained and supervised by the NPPO of Peru. APHIS may monitor the places of production if necessary.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Peru must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of paragraph (h) of this section.

(3) If the NPPO of Peru finds that a place of production or packinghouse is not complying with the requirements of this section, no fruit from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of Peru conduct an investigation and appropriate remedial actions have been implemented.

(4) The NPPO of Peru must retain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(c) *Grove sanitation.* Avocado fruit that has fallen from the trees must be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. Fallen avocado fruit may not be included in field containers

of fruit brought to the packinghouse to be packed for export.

(d) *Mitigation measures for A. fraterculus.* Places of production must meet one of the following requirements for *A. fraterculus:*

(1) *Pest-free area.* The avocados must be produced in a place of production located in an area that is designated as free of *A. fraterculus* in accordance with § 319.56–5.

(2) *Place of production with low pest prevalence.* (i) Beginning at least 1 year before harvest begins and continuing through the end of the harvest, trapping must be conducted in registered places of production with at least 1 trap per 0.2 square kilometers (km^2) to demonstrate that the places of production have a low prevalence of *A. fraterculus.* APHIS-approved traps baited with APHIS-approved plugs must be used and serviced at least once every 2 weeks.

(ii) During the trapping, when traps are serviced, if *A. fraterculus* are trapped at a particular place of production at cumulative levels above 0.7 flies per trap per day, pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export avocados to the United States. The NPPO of Peru must keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request.

(e) *Mitigation measures for C. capitata.* Places of production must meet one of the following requirements for *C. capitata:*

(1) *Pest-free area.* The avocados must be produced in a place of production located in an area that is designated as free of *C. capitata* in accordance with § 319.56–5.

(2) *Treatment.* Avocados from Peru must be treated for *C. capitata* in accordance with part 305 of this chapter.

(f) *Surveys for S. catenifer.* (1) Peruvian departamentos in which avocados are grown for export to the United States must be surveyed by the NPPO of Peru at least once annually, no more than 2 months before harvest begins, and found to be free from infestation by *S. catenifer.* APHIS must approve the survey protocol used to determine and maintain pest-free status and the actions to be performed if *S. catenifer* is detected. Surveys must include representative areas from all parts of each registered place of production in each departamento. The NPPO of Peru must cut and inspect a biometric sample of fruit at a rate determined by APHIS. Fruit sampled must be either from the upper half of the tree or from the ground. Sampled fruit must be cut and examined for the presence of eggs and larvae of *S. catenifer* in the pulp or seed and for the presence of eggs in the pedicel.

(2) If one or more *S. catenifer* is detected in the annual survey, or during any other monitoring or inspection activity, the affected place of production will be immediately suspended from the export program until appropriate measures to reestablish pest freedom, agreed upon by the NPPO of Peru and APHIS, have been taken. The NPPO of Peru must keep records of *S. catenifer* detections for each orchard, update the records each time the orchards are surveyed, and make the records available to APHIS inspectors upon request. The records must be maintained for at least 1 year after the beginning of the harvest.

(g) *Harvesting requirements.* Harvested avocados must be placed in field cartons or containers that are marked with the official registration number of the place of production. The place of production where the avocados were grown must remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. The fruit must be moved to a registered packinghouse within 3 hours of harvest or must be protected from fruit fly infestation until moved. The fruit must be safeguarded by an insect-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing.

(h) *Packinghouse requirements.* (1) During the time registered packinghouses are in use for packing avocados for export to the United States, the packinghouses may only accept avocados that are from registered places of production and that are produced in accordance with the requirements of this section.

(2) Avocados must be packed within 24 hours of harvest in an insect-exclusionary packinghouse. All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(3) Before packing, all avocados must be cleaned of all plant debris.

(4) Fruit must be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards must remain intact until arrival in the United States.

(5) Shipping documents accompanying consignments of avocados from Peru that are exported to the United States must include the official registration number of the place of production at which the avocados were grown and must identify the packing shed or sheds in which the fruit was processed and packed. This identification must be maintained until the fruit is released for entry into the United States.

(i) *NPPO of Peru inspection.* Following any post-harvest processing, inspectors from the NPPO of Peru must inspect a biometric sample of fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for the quarantine pests listed in the introductory text of this section and must cut fruit to inspect for *S. catenifer.* Unless the avocados were produced in a pest-free area as described in paragraph (d)(1) of this section, the inspectors must cut fruit to inspect for *A. fraterculus.* Unless the avocados were produced in a pest-free area as described in paragraph (e)(1) of this section, the inspectors must cut fruit to inspect for *C. capitata.* If any quarantine pests are detected in this inspection, the place of production where the infested avocados were grown will immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of Peru and appropriate mitigations have been implemented. If *C. capitata* is detected, avocados from the place of production where the infested avocados were produced may be imported into the United States only if treated with an approved treatment for *C. capitata* in accordance with part 305 of this chapter.

(j) *Phytosanitary certificate.* Each consignment of Hass avocados imported from Peru into the United States must be accompanied by a phytosanitary certificate issued by the NPPO of Peru with an additional declaration stating that the avocados in the consignment were grown, packed, and inspected and found to be free of pests in accordance with the requirements of 7 CFR 319.56–50. In addition:

(1) If the avocados were produced in an area free of *A. fraterculus,* the phytosanitary certificate must state that the avocados in this consignment were produced in an area designated as free of *A. fraterculus* in accordance with 7 CFR 319.56–5.

(2) If the avocados were produced in an area free of *C. capitata,* the phytosanitary certificate must state that the avocados in this consignment were

produced in an area designated as free of *C. capitata* in accordance with 7 CFR 319.56–5.

(3) If the avocados have been treated for *C. capitata* prior to export, the phytosanitary certificate must state that the avocados in the consignment have been treated for *C. capitata* in accordance with 7 CFR part 305.

(Approved by the Office of Management and Budget under control number 0579–0355)

Done in Washington, DC, this 28th day of December.

Cindy Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–31182 Filed 12–31–09; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AI01

[NRC–2007–0008]

Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to provide alternate fracture toughness requirements for protection against pressurized thermal shock (PTS) events for pressurized water reactor (PWR) pressure vessels. This final rule provides alternate PTS requirements based on updated analysis methods. This action is desirable because the existing requirements are based on unnecessarily conservative probabilistic fracture mechanics analyses. This action reduces regulatory burden for those PWR licensees who expect to exceed the existing requirements before the expiration of their licenses, while maintaining adequate safety, and may choose to comply with the final rule as an alternative to complying with the existing requirements.

DATES: *Effective Date:* February 3, 2010.

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

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2007–0008. Address questions about NRC Dockets to Carol Gallagher at 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

NRC's Public Document Room (PDR): The public may examine publicly available documents at the NRC's PDR, Public File Area O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

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

FOR FURTHER INFORMATION CONTACT: Ms. Veronica M. Rodriguez, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–3703; e-mail: *Veronica.Rodriguez@nrc.gov,* Mr. Matthew Mitchell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1467; e-mail: *Matthew.Mitchell@nrc.gov,* or Mr. Mark Kirk, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 251–7631; e-mail: *Mark.Kirk@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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XIII. Congressional Review Act

I. Background

PTS events are system transients in a PWR in which there is a rapid operating temperature cooldown that results in cold vessel temperatures with or without repressurization of the vessel. The rapid cooling of the inside surface of the reactor vessel causes thermal stresses. The thermal stresses can combine with stresses caused by high pressure. The aggregate effect of these stresses is an increase in the potential for fracture if a pre-existing flaw is present in a material susceptible to brittle failure. The ferritic, low alloy steel of the reactor vessel beltline adjacent to the core, where neutron radiation gradually embrittles the material over the lifetime of the plant, can be susceptible to brittle fracture.

The current PTS rule, described in § 50.61, ''Fracture Toughness Requirements for Protection against Pressurized Thermal Shock Events,'' adopted on July 23, 1985 (50 FR 29937), establishes screening criteria below which the potential for a reactor vessel to fail due to a PTS event is deemed to be acceptably low. These screening criteria effectively define a limiting level of embrittlement beyond which operation cannot continue without further plant-specific evaluation.

A licensee may not continue to use a reactor vessel with materials predicted to exceed the screening criteria in § 50.61 without implementing compensatory actions or additional plant-specific analyses unless the licensee receives an exemption from the requirements of the rule. Acceptable compensatory actions are neutron flux reduction, plant modifications to reduce the PTS event probability or severity, and reactor vessel annealing, which are addressed in §§ 50.61(b)(3), (b)(4), and (b)(7); and 50.66, ''Requirements for Thermal Annealing of the Reactor Pressure Vessel.''

Currently, no operating PWR vessel is projected to exceed the § 50.61 screening criteria before the expiration of its 40 year operating license. However, several PWR vessels are approaching the screening criteria, while others are likely to exceed the screening criteria during the extended period of operation of their first license renewal.

The NRC's Office of Nuclear Regulatory Research (RES) developed a technical basis that supports updating the PTS regulations. This technical basis concluded that the risk of through-wall cracking due to a PTS event is much lower than previously estimated. This finding indicated that the screening criteria in § 50.61 are unnecessarily conservative and may impose an unnecessary burden on some licensees. Therefore, the NRC developed a proposed new rule, § 50.61a, ''Alternate Fracture Requirements for Protection against Pressurized Thermal Shock Events,'' providing alternate screening criteria and corresponding embrittlement correlations based on the updated technical basis. The NRC decided that providing a new section containing the updated screening

criteria and updated embrittlement correlations would be appropriate. The NRC could have revised § 50.61 to include the new requirements, which could be implemented as an alternative to the current requirements. However, providing two sets of requirements within the same regulatory section was considered confusing and/or ambiguous as to which requirements apply to which licensees.

The NRC published the proposed rule for public comment in the **Federal Register** on October 3, 2007 (72 FR 56275). Following the closure of the comment period on the proposed rule and during the development of the PTS final rule, the NRC determined that several changes to the October 3, 2007 proposed rule language were desirable to adequately address issues raised in stakeholder's comments. Because these modifications may not have represented a logical outgrowth from the October 2007 proposed rule's provisions, the NRC requested stakeholder feedback on the modified provisions in a supplemental proposed rule published in August 11, 2008 (73 FR 46557). In the supplemental proposed rule, the NRC proposed modifications to the provisions related to the applicability of the rule and the evaluation of reactor vessel surveillance data. In addition, the NRC requested comments on the adjustments of volumetric examination data to demonstrate compliance with the rule. After consideration of the October 2007 proposed rule, the August 2008 supplemental proposed rule and the stakeholder comments received on both, the NRC has decided to adopt the PTS final rule as described further in this document.

II. Discussion

The NRC completed a research program that concluded that the risk of through-wall cracking due to a PTS event is much lower than previously estimated. This finding indicates that the screening criteria in § 50.61 are unnecessarily conservative and may impose an unnecessary burden on some licensees. Therefore, the NRC developed a final rule, § 50.61a, that can be implemented by PWR licensees.

The § 50.61a alternate screening criteria and corresponding embrittlement correlations are based on a technical basis as documented in the following reports: (1) NUREG–1806, ''Technical Basis for Revision of the Pressurized Thermal Shock (PTS) Screening Limits in the PTS Rule (10 CFR 50.61): Summary Report,'' (ADAMS Accession No. ML061580318); (2) NUREG–1874, ''Recommended Screening Limits for Pressurized Thermal Shock (PTS),'' (ADAMS Accession No. ML070860156); (3) Memorandum from Elliot to Mitchell, dated April 3, 2007, ''Development of Flaw Size Distribution Tables for Draft Proposed Title 10 of the *Code of Federal Regulations* (10 CFR) 50.61a,'' (ADAMS Accession No. ML070950392); (4) ''Statistical Procedures for Assessing Surveillance Data for 10 CFR Part 50.61a,'' (ADAMS Accession No. ML081290654); and (5) ''A Physically Based Correlation of Irradiation Induced Transition Temperature Shifts for RPV Steel,'' (ADAMS Accession No. ML081000630).

Applicability of the Final Rule

The final rule is based on, in part, analyses of information from three currently operating PWRs. Because the severity of the risk-significant transient classes (*e.g.,* primary side pipe breaks, stuck open valves on the primary side that may later re-close) is controlled by factors that are common to PWRs in general, the NRC concluded that the results and screening criteria developed from the analysis of these three plants can be applied with confidence to the entire fleet of operating PWRs. This conclusion is based on an understanding of characteristics of the dominant transients that drive their risk significance and on an evaluation of a larger population of high embrittlement PWRs. This evaluation revealed no design, operational, training, or procedural factors that could credibly increase either the severity of these transients or the frequency of their occurrence in the general PWR population above the severity and frequency characteristic of the three plants that were modeled in detail. The NRC also concluded that insignificant PTS events are not expected to become dominant.

The final rule is applicable to licensees whose construction permits were issued before February 3, 2010 and whose reactor vessels were designed and fabricated to the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), 1998 Edition or earlier. This would include applicants for plants such as Watts Bar Unit 2 who have not yet received an operating license. However, it cannot be demonstrated, *a priori,* that reactor vessels that were not designed and fabricated to the specified ASME Code editions will have material properties, operating characteristics, PTS event sequences and thermal-hydraulic responses consistent with those evaluated as part of the technical basis for this rule. Therefore, the NRC determined that it would not be prudent at this time to extend the use of the rule to future PWR plants and plant designs such as the Advanced Passive (AP) 1000, Evolutionary Power Reactor (EPR) and U.S. Advanced Pressurized Water Reactor (US–APWR). These designs have different reactor vessels than those in the currently operating plants, and the fabrication of the vessels based on these designs may differ from the vessels evaluated in the analyses that form the bases for the final rule. Licensees of reactors who commence commercial power operation after the effective date of this rule or licensees with reactor vessels that were not designed and fabricated to the 1998 Edition or earlier of the ASME Code may, under the provisions of § 50.12, seek an exemption from § 50.61a(b) to apply this rule if a plant-specific basis analyzing their plant operating characteristics, materials of fabrication, and welding methods is provided.

Updated Embrittlement Correlation

The technical basis for § 50.61a uses many different models and parameters to estimate the yearly probability that a PWR will develop a through-wall crack as a consequence of PTS loading. One of these models is a revised embrittlement correlation that uses information on the chemical composition and neutron exposure of low alloy steels in the reactor vessel's beltline region to estimate the resistance to fracture of these materials. Although the general trends of the embrittlement models in §§ 50.61 and 50.61a are similar, the form of the revised embrittlement correlation in § 50.61a differs substantially from the correlation in § 50.61. The correlation in the § 50.61a final rule has been updated to more accurately represent the substantial amount of reactor vessel surveillance data that has accumulated since the embrittlement correlation was last revised during the 1980s.

In-Service Inspection Volumetric Examination and Flaw Assessments

The § 50.61a final rule differs from § 50.61 in that it contains a requirement for licensees who choose to follow its requirements to analyze the results from the ASME Code, Section XI, inservice inspection volumetric examinations. The examinations and analyses will determine if the flaw density and size distribution in the licensee's reactor vessel beltline are bounded by the flaw density and size distribution used in the technical basis. The technical basis was developed using a flaw density, spatial distribution, and size distribution determined from experimental data, as well as from physical models and expert

elicitation. The experimental data were obtained from samples removed from reactor vessel materials from cancelled plants (*i.e.,* Shoreham and the Pressure Vessel Research Users Facility (PVRUF) vessel). The NRC considers that the analysis of the ASME Code inservice inspection volumetric examination is needed to confirm that the flaw density and size distributions in the reactor vessel, to which the final rule may be applied, are consistent with those in the technical basis.

Paragraph (g)(6)(ii)(C) of 10 CFR 50.55a requires licensees to implement the ASME Code, Section XI, Appendix VIII, Supplements 4 and 6. Supplement 4 contains qualification requirements for the reactor vessel inservice inspection volume from the clad-to-base metal interface to the inner 1.0 inch or 10 percent of the vessel thickness, whichever is larger. Supplement 6 contains qualification requirements for reactor vessel weld volumes other than those near the clad-to-base metal interface. Analysis of the performance by qualified inspectors indicates that there is an 80 percent or greater probability of detecting a flaw that contributes to crack initiation from PTS events when they are inspected using the ASME Code, Section XI, Appendix VIII, Supplement 4 requirements.[1]

The true flaw density for flaws with a through-wall extent of between 0.1 and 0.3 inch can be inferred from the ASME Code examination results and the probability of detection. The technical basis for the final rule concludes that flaws as small as 0.1 inch in through-wall extent contribute to the through-wall crack frequency (TWCF), and nearly all of the contributions come from flaws buried less than 1 inch below the inner diameter surface of the reactor vessel. For weld flaws that exceed the sizes prescribed in the final rule, the risk analysis indicates that a single flaw can be expected to contribute a significant fraction of the 1×10^{-6} per reactor year limit on TWCF. Therefore, if a flaw that exceeds the sizes prescribed in the final rule is found in a reactor vessel, it is important to assess it individually.

The technical basis for the final rule also indicates that flaws buried deeper than 1 inch from the clad-to-base interface are not as susceptible to brittle fracture as similar size flaws located closer to the inner surface. Therefore, the final rule does not require the comparison of the density of these flaws, but still requires large flaws, if discovered, to be evaluated for contributions to TWCF if they are within the inner three-eighths of the vessel thickness. The limitation for flaw acceptance, specified in ASME Code, Section XI, Table IWB–3510–1, approximately corresponds to the threshold for flaw sizes that can make a significant contribution to TWCF if present in reactor vessel material at this depth. Therefore, the final rule requires that flaws exceeding the size limits in ASME Code, Section XI, Table IWB–3510–1 be evaluated for contribution to TWCF in addition to the other evaluations for such flaws that are prescribed in the ASME Code.

The numerical values in Tables 2 and 3 of the final rule represent the number of flaws in each size range that were derived from the technical basis. Verifying that a plant that intends to implement this rule has weld, plate and/or forging flaw distributions which are consistent with those assumed in the technical basis is necessary to ensure the applicability of the rule to that plant. If one or more larger flaws are found in a reactor vessel, they must be evaluated to ensure that they are not causing the TWCF to exceed the regulatory limit.

The final rule also clarifies that, to be consistent with ASME Code, Section XI, Appendix VIII, the smallest flaws that must be sized are 0.075 inches in through-wall extent. For each flaw detected that has a through-wall extent equal to or greater than 0.075 inches, the licensee shall document the dimensions of the flaw, its orientation and its location within the reactor vessel, and its depth from the clad-to-base metal interface. Those planar flaws for which the major axis of the flaw is identified by an ultrasonic transducer oriented in the circumferential direction must be documented as ''axial.'' All other planar flaws may be categorized as ''circumferential.'' The NRC may also use this information to evaluate whether plant-specific information gathered suggests that the NRC staff should generically re-examine the technical basis for the rule.

Surface cracks that penetrate through the stainless steel clad and more than 0.070 inch into the welds or the adjacent base metal were not included in the technical basis because these types of flaws have not been observed in the beltline of any operating PWR vessel. However, flaws of this type were observed in the Quad Cities Unit 2 reactor vessel head in 1990 (NUREG–1796, ''Safety Evaluation Report Related to the License Renewal of the Dresden Nuclear Power Station, Units 2 and 3 and Quad Cities Nuclear Power Station, Units 1 and 2,'' dated October 31, 2004). The observed cracks had a maximum depth into the base metal of approximately 0.24 inch and penetrated through the stainless steel clad. Quad Cities Units 2 and 3 are boiling water reactors which are not susceptible to PTS events and hence are not subject to the requirements of 10 CFR 50.61. The cracking at Quad Cities Unit 2 was attributed to intergranular stress corrosion cracking of the stainless steel cladding, which has not been observed in PWR vessels, and hot cracking of the low alloy steel base metal. If these cracks were in the beltline region of a PWR, they would be a significant contributor to TWCF because of their size and location. The final rule requires licensees to determine if cracks of this type exist in the beltline weld region at each ASME Code, Section XI, ultrasonic examination.

Nondestructive Examination (NDE)-Related Uncertainties

The flaw sizes in Tables 2 and 3 represent actual flaw dimensions while the results from the ASME Code examinations are estimated dimensions. The available information indicates that, for most flaw sizes in Tables 2 and 3, qualified inspectors will oversize flaws. Comparing oversized flaws to the size and density distributions in Tables 2 and 3 is conservative and acceptable, but not necessary.

As a result of stakeholder feedback received on the NRC solicitation for comments published in the August 2008 supplemental proposed rule, the final rule will permit licenses to adjust the flaw sizes estimated by inspectors qualified under the ASME Code, Section XI, Appendix VIII, Supplement 4 and Supplement 6.

The NRC determined that, in addition to the NDE sizing uncertainties, licensees should be allowed to consider other NDE uncertainties, such as probability of detection and flaw density and location, because these uncertainties may affect the ability of a licensee to demonstrate compliance with the rule. As a result, the language in § 50.61a(e) will allow licensees to account for the effects of NDE-related uncertainties in meeting the flaw size and density requirements of Tables 2 and 3. The methodology to account for the effects of NDE-related uncertainties must be based on statistical data collected from ASME Code inspector qualification tests or any other tests that measure the difference between the actual flaw size and the size determined from the ultrasonic examination. Verification that a licensee's flaw size

[1] Becker, L., ''Reactor Pressure Vessel Inspection Reliability,'' Proceeding of the Joint EC–IAEA Technical Meeting on the Improvement in In-Service Inspection Effectiveness, Petten, the Netherlands, November 2002.

and density distribution are upper-bounded by the distribution of Tables 2 and 3 is required to confirm that the risk associated with PTS is acceptable. Collecting, evaluating, and using data from ASME Code inspector qualification tests will require extensive engineering judgment. Therefore, the methodology used to adjust flaw sizes to account for the effects of NDE-related uncertainties must be reviewed and approved by the Director of the Office of Nuclear Reactor Regulation (NRR).

Surveillance Data

Paragraph (f) of the final rule defines the process for calculating the values for the reference temperature properties (*i.e.,* defined as RT_{MAX-X}) for a particular reactor vessel. These values must be based on the vessel material's copper, manganese, phosphorus, and nickel weight percentages, reactor cold leg temperature, and fast neutron flux and fluence values, as well as the unirradiated nil-ductility transition reference temperature (*i.e.,* RT_{NDT}).

The rule includes a procedure by which the RT_{MAX-X} values, which are predicted for plant-specific materials using a generic temperature shift (*i.e.,* ΔT_{30}) embrittlement trend curve, are compared with heat-specific surveillance data that are collected as part of 10 CFR part 50, Appendix H, surveillance programs. The purpose of this comparison is to assess how well the surveillance data are represented by the generic embrittlement trend curve. If the surveillance data are close (closeness is assessed statistically) to the generic embrittlement trend curve, then the predictions of this embrittlement trend curve are used. This is expected to be the case most often. However, if the heat-specific surveillance data deviate significantly, and non-conservatively, from the predictions of the generic embrittlement trend curve, this indicates that alternative methods (*i.e.,* other than, or in addition to, the generic embrittlement trend curve) *may be* needed to reliably predict the temperature shift trend, and to estimate $RT_{MAX-X,}$ for the conditions being assessed.

The NRC is modifying the final rule to include three statistical tests to determine the significance of the differences between heat-specific surveillance data and the embrittlement trend curve. The NRC determined that a single test is not sufficient to ensure that the temperature shift predicted by the embrittlement trend curve represents well the heat-specific surveillance data. Specifically, this single statistical test cannot determine if the temperature shift from the surveillance data show a more rapid increase after significant radiation exposure than the progression predicted by the generic embrittlement trend curve. This potential deficiency could be particularly important during a plant's period of extended operation. The deviations from the generic embrittlement trend curve are best assessed by licensees on a case-by-case basis, which would be submitted for the review of the Director of NRR.

The results of the first statistical test will determine if, on average, the temperature shifts from the surveillance data are significantly higher than the temperature shifts from the generic embrittlement trend curve. The results of the second and third tests will determine if the temperature shift from the surveillance data show a more rapid increase after significant radiation exposure than the progression predicted by the generic embrittlement trend curve.

III. Responses to Comments on the Proposed Rule and Supplemental Proposed Rule

The NRC received 5 comment letters for a total of 54 comments on the proposed rule published on October 3, 2007, and 3 comment letters for a total of 5 comments on the supplemental proposed rule published on August 11, 2008. All the comments on the proposed rule and supplemental proposed rule were submitted by industry stakeholders. A detailed discussion of the public comments and the NRC's responses are contained in a separate document (see Section V, ''Availability of Documents,'' of this document). This section only discusses the more significant comments received on the proposed rule and supplemental proposed rule provisions and the substantive changes made to develop the final rule requirements. The NRC also requested stakeholder feedback on one question in the supplemental proposed rule. This section discusses the comments received from the NRC inquiry and the changes made to the final rule language as a result of these comments. Comments are discussed by subject.

Comments on the Applicability of the Proposed Rule:

Comment: The commenters stated that the rule, as written, is only applicable to the existing fleet of PWRs. The characteristics of advanced PWR designs were not considered in the analysis. The commenters suggested adding a statement that this rule is applicable to the current PWR fleet and not the new plant designs.

Response: The NRC agrees with the comment that this rule is only applicable to the existing fleet of PWRs. The NRC cannot be assured that plants whose construction permit was issued after February 3, 2010, and whose reactor vessel was designed and fabricated to ASME Code Editions later than the 1998 Edition will have material properties, operating characteristics, PTS event sequences and thermal-hydraulic responses consistent with the reactors that were evaluated as part of the technical basis for § 50.61a. Other factors, including materials of fabrication and welding methods, would also be consistent with the underlying technical basis of 10 CFR 50.61a. As a result of this comment, the NRC modified § 50.61a(b) and the statement of considerations of the rule to reflect this position to allow the use of the rule only to plants whose construction permit was issued before February 3, 2010 and whose reactor vessel was designed and fabricated to the 1998 Edition or earlier of the ASME Code.

Comments on Surveillance Data:

Comment: The commenters stated that there is little added value in the requirement to assess the surveillance data as a part of this rule because variability in data has already been accounted for in the derivation of the embrittlement correlation.

The commenters also stated that there is no viable methodology for adjusting the projected ΔT_{30} for the vessel based on the surveillance data. Any effort to make this adjustment is likely to introduce additional error into the prediction. Note that the embrittlement correlation described in the basis for the revised PTS rule (*i.e.,* NUREG–1874) was derived using all of the then available industry-wide surveillance data.

In the event that the surveillance data does not match the ΔT_{30} value predicted by the embrittlement correlation, the best estimate value for the pressure vessel material is derived using the embrittlement correlation. The likely source of the discrepancy is an error in the characterization of the surveillance material or of the irradiation environment. Therefore, unless the discrepancy can be resolved, obtaining the ΔT_{30} prediction based on the best estimate chemical composition for the heat of the material is more reliable than a prediction based on a single set of surveillance measurements.

The commenters suggested removing the requirement to assess surveillance data, including Table 5, of this rule.

Response: The NRC does not agree with the proposed change. The NRC believes that there is added value in the

requirement to assess reactor vessel surveillance data. Although variability has been accounted for in the derivation of the embrittlement correlation, it is the NRC's view that the surveillance data assessment required in § 50.61a(f)(6) is needed to determine if the embrittlement for a specific heat of material in a reactor vessel is consistent with the embrittlement predicted by the embrittlement correlation.

The commenters also assert that there is no viable methodology for adjusting the projected ΔT_{30} for the vessel based on the surveillance data, and that any adjustment is likely to introduce additional error into the prediction. The NRC believes that although there is no single methodology for adjusting the projected ΔT_{30} for the vessel based on the surveillance data, it is possible, on a case-specific basis, to justify adjustments to the generic ΔT_{30} prediction. For this reason the rule does not specify a method for adjusting the ΔT_{30} value based on surveillance data, but rather requires the licensee to propose a case-specific ΔT_{30} adjustment procedure for review and approval of the Director of NRR. Although the commenters assert that it is possible that error could be introduced, it is the NRC view that appropriate plant-specific adjustments based upon available surveillance data may be necessary to project reactor pressure vessel embrittlement for the purpose of this rule.

As the result of these public comments, the NRC has continued to work on statistical procedures to identify deviations from generic embrittlement trends, such as those described in § 50.61a(f)(6) of the proposed rule. Based on this work, the NRC enhanced the procedure described in § 50.61a(f)(6) to, among other things, detect trends from plant- and heat-specific surveillance data that may emerge at high fluences that are not reflected by Equations 5, 6, and 7. The empirical basis for the NRC's concern regarding the potential for un-modeled high fluence effects is described in documents located at ADAMS Accession Nos. ML081120253, ML081120289, ML081120365, ML081120380, and ML081120600. The technical basis for the enhanced surveillance data assessment procedure is described in the document located at ADAMS Accession No. ML081290654.

Comment: The second surveillance data check described in the supplemental proposed rule should be eliminated from the rule because the slope change evaluation appears to be of limited value.

The second required surveillance data check is to address a slope change. The intent of this section appears to identify potential increases in the embrittlement rate at high fluence. The industry intends to move forward with an initiative to populate the power reactor vessel surveillance program database with higher neutron fluence surveillance data (*i.e.,* extending to fluence values equivalent to 60–80 effective full power year (EFPY)) that will adequately cover materials variables for the entire PWR fleet. This database should provide a more effective means of evaluating the potential for enhanced embrittlement rates at high fluence values rather than using an individual surveillance data set to modify the trend with fluence. Data from this initiative will be available in the next few years to assess the likelihood of enhanced embrittlement rates for the PWR fleet.

Response: The NRC does not agree with the commenters' statement that the slope test (*i.e.,* § 50.61a(f)(6)(iii)) has limited value and that it should be eliminated from the rule. The NRC believes that the slope test provides a method for determining whether high neutron fluence surveillance data is consistent with the ΔT_{30} model in the rule. Because there are currently only a few surveillance data points from commercial power reactors at high neutron fluences and the slope test will provide meaningful information, the NRC determines that the slope test should not be eliminated from the rule.

The NRC agrees with the industry initiative to obtain additional power reactor data at higher fluences. The NRC will review this data and the information available to evaluate the effects of high neutron fluence exposure when it becomes available. At that point, the NRC will determine if modifications to the embrittlement model and/or the surveillance data checks in § 50.61a should be made.

No changes were made to the rule language as a result of this comment.

Comments Related to the NRC Inquiry Related to the Adjustment of Volumetric Examination Data:

Comment: § 50.61a(e) should be modified to allow licensees to account for the effects of flaw sizing uncertainties and other uncertainties in meeting the requirements of Tables 2 and 3. The rule language should allow the use of applicable data from ASME qualification tests, vendor-specific performance demonstration tests, and other current and future data that may be applicable for assessing these uncertainties. The rule language should permit flaw sizes to be adjusted to account for the sizing uncertainties and other uncertainties before comparing the estimated size and density distribution to the acceptable size and density distributions in Tables 2 and 3.

The industry will provide guidance to enable licensees to account for the effects of sizing uncertainties and other uncertainties in meeting the requirements of Tables 2 and 3 of the rule. Guidance to ensure that the risk associated with PTS is acceptable will be provided to the Director of NRR for review and approval when completed.

Response: The NRC agrees that, in addition to the NDE sizing uncertainties, licensees should be allowed to consider other NDE uncertainties (*e.g.,* probability of detection, flaw density and location) in meeting the requirements of the rule as these uncertainties may affect the ability of a licensee to demonstrate compliance with the rule. As a result, the language in § 50.61a(e) was modified to allow licensees to account for the effects of NDE-related uncertainties in meeting the flaw size and density requirements of Tables 2 and 3. This requirement would be accomplished by requiring licensees to base their methodology to account for the NDE uncertainties on statistical data collected from ASME Code inspector qualification tests and any other tests that measure the difference between the actual flaw size and the size determined from the ultrasonic examination. Collecting, evaluating, and using data from these tests will require extensive engineering judgment. Therefore, the methodology would have to be reviewed and approved by the Director of NRR.

Lastly, the commenters proposed to provide industry guidance to enable licensees to account for the effects of NDE uncertainties. The NRC determined that the rule language clearly states the information that must specifically be provided for NRC review and approval if licensees choose to account for NDE uncertainties. However, if industry guidance documents are developed, the NRC will consider them when submitted for review and approval.

IV. Section-by-Section Analysis

The following section-by-section analysis discusses the sections that are being modified as a result of this final rulemaking.

Section 50.8(b)—Information collection requirements: OMB approval

This paragraph is modified to include the amended information collection requirements as a result of this final rule.

Section 50.61—Fracture toughness requirements for protection against pressurized thermal shock events

Section 50.61 contains the current requirements for PTS screening limits and embrittlement correlations. Paragraph (b) of this section is modified to reference § 50.61a as a voluntary alternative to compliance with the requirements of § 50.61. No changes are made to the current PTS screening criteria, embrittlement correlations, or any other related requirements in this section.

Section 50.61a—Alternate fracture toughness requirements for protection against pressurized thermal shock events

A new § 50.61a is added. Section 50.61a contains PTS screening limits based on updated probabilistic fracture mechanics analyses. This section provides requirements on PTS analogous to that of § 50.61, fracture toughness requirements for protection against PTS events for PWRs. However, § 50.61a differs extensively in how the licensee determines the resistance to fractures initiating from different flaws at different locations in the vessel beltline, as well as in the fracture toughness screening criteria. The final rule requires quantifying PTS reference temperatures (RT_{MAX-X}) for flaws along axial weld fusion lines, plates, forgings, and circumferential weld fusion lines, and comparing the quantified value against the RT_{MAX-X} screening criteria. Although comparing quantified values to the screening criteria is also required by the current § 50.61, the new § 50.61a provides screening criteria that vary depending on material product form and vessel wall thickness. Further, the embrittlement correlation and the method of calculation of RT_{MAX-X} values in § 50.61a differ significantly from that in § 50.61 as described in the technical basis for this rule. The new embrittlement correlation was developed using multivariable surface-fitting techniques based on pattern recognition, understanding of the underlying physics, and engineering judgment. The embrittlement database used for this analysis was derived primarily from reactor vessel material surveillance data from operating reactors that are contained in the Power Reactor Embrittlement Data Base (PR–EDB) developed at Oak Ridge National Laboratory. The updated RT_{MAX-X} estimation procedures provide a better (compared to the existing regulation) method for estimating the fracture toughness of reactor vessel materials over the lifetime of the plant. However, if extensive mixed oxide (MOX) fuels with a high plutonium component are to be used, the neutron irradiation of the vessel material will contain more neutrons per unit energy produced and those neutrons will have higher energies. Extensive use of MOX fuel would result in a change in the Reactor Core Fuel Assembly (RCFA) design. Thus, in accordance to § 50.90, licensees are required to submit a license amendment before changing the RCFA design. The § 50.61a final rule requires that licensees verify an appropriate RT_{MAX-X} value has been calculated for each reactor vessel beltline material considering plant-specific information that could affect the use of the model. A licensee using MOX fuel would use its surveillance data to meet the requirements of § 50.61a and must justify the applicability of the model expressed by Equations 5, 6, and 7 listed in the final rule.

Section 50.61a(a)

This paragraph contains definitions for terms used in § 50.61a. It explains that terms defined in § 50.61 have the same meaning in § 50.61a, unless otherwise noted.

Section 50.61a(b)

This paragraph sets forth the applicability of the final rule and specifies that its provisions apply only to those holders of operating licenses whose construction permits were issued before February 3, 2010, and whose reactor vessels were designed and fabricated to the 1998 Edition or earlier of the ASME Code. Both elements must be satisfied in order for a licensee to take advantage of § 50.61a. The rule does not apply to any combined license issued under Part 52 for two reasons: (1) the combined license would be issued after February 3, 2010, and (2) none of the reactor vessels for the nuclear power reactors covered by these combined licenses would have been designed and fabricated to the 1998 Edition or earlier of the ASME Code. The same logic also explains why § 50.61a would not apply to any design certification or manufacturing license issued under Part 52.

Section 50.61a(c)

This paragraph establishes the requirements governing NRC approval of a licensee's use of § 50.61a. The licensee has to make a formal request to the NRC via a license amendment, and would only be allowed to implement § 50.61a upon NRC approval. The license amendment request must provide information that includes: (1) Calculations of the values of RT_{MAX-X} values as required by § 50.61a(c)(1); (2) examination and assessment of flaws discovered by ASME Code inspections as required by § 50.61a(c)(2); and (3) comparison of the RT_{MAX-X} values against the applicable screening criteria as required by § 50.61a(c)(3). In doing so, the licensee also would be required to use §§ 50.61a(e), (f) and (g) to perform the necessary calculations, comparisons, examinations, assessments, and analyses.

Section 50.61a(d)

This paragraph defines the requirements for subsequent examinations and flaw assessments after initial approval to use § 50.61a has been obtained under the requirements of § 50.61a(c). It also defines the required compensatory measures or analyses to be taken if a licensee determines that the screening criteria will be exceeded. Paragraph (d)(1) defines the requirements for subsequent RT_{MAX-X} assessments consistent with the requirements of §§ 50.61a(c)(1) and (c)(3). Paragraph (d)(2) defines the requirements for subsequent examination and flaw assessments using the requirements of § 50.61a(e). Paragraphs (d)(3) through (d)(7) define the requirements for implementing compensatory measures or plant-specific analyses should the value of RT_{MAX-X} be projected to exceed the PTS screening criteria in Table 1 of this section.

Section 50.61a(e)

This paragraph defines the requirements for verifying that the PTS screening criteria in § 50.61a are applicable to a particular reactor vessel. The final rule requires that the verification be based on an analysis of test results from ultrasonic examination of the reactor vessel beltline materials required by ASME Code, Section XI.

Section 50.61a(e)(1)

This paragraph establishes limits on flaw density and size distributions within the volume described in ASME Code, Section XI, Figures IWB–2500–1 and IWB–2500–2, and limited to a depth of approximately 1 inch from the clad-to-base metal interface or 10 percent of the vessel thickness, whichever is greater. Flaws in this inspection volume contribute approximately 97 to 99 percent to the TWCF at the screening limit.

The verification shall be performed line-by-line for Tables 2 and 3. For example, for the second line in Table 2, the licensee would tabulate all of the flaws detected in the relevant inspection volume in welds and would tally the

number that have through-wall extents between the minimum (TWE_{MIN}) and maximum (TWE_{MAX}) values for line 2 (0.075 inches and 0.475 inches), would divide that total number by the number of thousands of inches of weld length examined to get a density, and would compare the resulting density to the limit in line 2, column 3 (which is 166.70 flaws per 1000 inches of weld metal). The licensee would then perform a similar analysis for line 3 in Table 2 by tallying the number of the flaws that have through-wall extents between the TWE_{MIN} and TWE_{MAX} values for line 3 (0.125 inches and 0.475 inches), would divide the total number by the number of thousands of inches of weld length examined to get a density, and would compare the resulting density to the limit in line 3, column 3 (which is 90.80 flaws per 1000 inches of weld metal). This process would be repeated for each line in the tables.

This paragraph allows licensees to adjust test results from the volumetric examination to account for the effects of NDE-related uncertainties. If test data is adjusted to account for NDE-related uncertainties, the methodology and statistical data used to account for these uncertainties must be submitted for review and approval by the Director of NRR.

This paragraph also states that if the licensee's flaw density and size distribution exceeds the values in Tables 2 and 3, a neutron fluence map would have to be submitted in accordance with § 50.61a(e)(6).

Sections 50.61a(e)(1)(i) and (e)(1)(ii)

These paragraphs describe the flaw density limits for welds and for plates and forgings, respectively.

Section 50.61a(e)(1)(iii)

This paragraph describes the specific ultrasonic examination information to be submitted to the NRC. This paragraph establishes the documenting requirement for axial and circumferential flaws with a through-wall extent equal to or greater than 0.075 inches. Licensees must document indications that have been observed through ultrasonic inspections intended to locate axially-oriented flaws as ''axial'' (*i.e.,* an axial flaw would be one identified by an ultrasonic transducer oriented in the circumferential direction). All other indications may be categorized as ''circumferential.'' The NRC will use this information to evaluate whether plant-specific information gathered in accordance with this rule suggests that the NRC should generically re-examine the technical basis for the rule.

Section 50.61a(e)(2)

This paragraph requires that licensees verify that clad-to-base metal interface flaws do not open to the inside surface of the vessel. These types of flaws could have a substantial effect on the TWCF.

Section 50.61a(e)(3)

This paragraph establishes limits for flaws that are between the clad-to-base metal interface and three-eights of the reactor vessel wall thickness from the interior surface. Flaws exceeding these limits could affect the TWCF. Flaws greater than three-eights of the reactor vessel wall thickness from the interior surface of the reactor vessel thickness do not contribute to the TWCF at the screening limit.

Section 50.61a(e)(4)

This paragraph establishes requirements to be met if flaws exceed the limits in §§ 50.61a(e)(1) and (e)(3), or open to the inside surface of the reactor vessel. This section requires an analysis to demonstrate that the reactor vessel would have a TWCF of less than 1×10^{-6} per reactor year. The analysis could be a complete, plant-specific, probabilistic fracture mechanics analysis or could be a simplified analysis of flaw size, orientation, location and embrittlement to demonstrate that the actual flaws in the reactor vessel are not in locations, and/or do not have orientations, that would cause the TWCF to be greater than 1×10^{-6} per reactor year. With specific regard to circumferentially-oriented flaws that exceed the limits of §§ 50.61a(e)(1) and (e)(3), it may be noted that even if a reactor pressure vessel has a circumferential weld at the RT_{MAX-CW} limits of Table 1, this weld only contributes 1×10^{-8} per reactor year to the TWCF predicted for the vessel. Licensees must comply with this if the requirements of §§ 50.61a(e)(1), (e)(2), and (e)(3) are not satisfied.

Section 50.61a(e)(5)

This paragraph describes the critical parameters to be addressed if flaws exceed the limits in §§ 50.61a(e)(1) and (e)(3) or if the flaws would open to the inside surface of the reactor vessel. This paragraph will be required to be implemented if the requirements of §§ 50.61a(e)(1), (e)(2), and (e)(3) are not satisfied.

Section 50.61a(e)(6)

This paragraph establishes the requirements for submitting a neutron fluence map if the flaw density and sizes are greater than those specified in Tables 2 and 3. Regulatory Guide 1.190 provides an acceptable methodology for determining the reactor vessel neutron fluence.

Section 50.61a(f)(1) through (f)(5)

These paragraphs define the process for calculating the values for the material properties (*i.e.,* RT_{MAX-X}) for a particular reactor vessel. These values are based on the vessel's copper, manganese, phosphorus, and nickel weight percentages, reactor cold leg temperature, and neutron flux and fluence values, as well as the unirradiated RT_{NDT} of the product form in question.

Section 50.61a(f)(6)

This paragraph requires licensees to consider the plant-specific information that could affect the use of the embrittlement model established in the final rule.

Section 50.61a(f)(6)(i)

This paragraph establishes the requirements to perform data checks to determine if the surveillance data show a significantly different trend than what the embrittlement model in this rule predicts. Licensees are required to evaluate the surveillance for consistency with the embrittlement model by following the procedures specified by §§ 50.61a(f)(6)(ii), (f)(6)(iii), and (f)(6)(iv).

Section 50.61a(f)(6)(ii)

This paragraph establishes the requirements to perform an estimate of the mean deviation of the surveillance data set from the embrittlement model. The mean deviation for the surveillance data set must be compared to values given in Table 5 or Equation 10. The surveillance data analysis must follow the criteria in §§ 50.61a(f)(6)(v) and (f)(6)(vi).

Section 50.61a(f)(6)(iii)

This paragraph establishes the requirements to estimate the slope of the embrittlement model residuals (*i.e.,* the difference between the measured and predicted value for a specific data point). The licensee must estimate the slope using Equation 11 and compare this value to the maximum permissible value in Table 6. This surveillance data analysis must follow the criteria in §§ 50.61a(f)(6)(v) and (f)(6)(vi).

Section 50.61a(f)(6)(iv)

This paragraph establishes the requirements to estimate an outlier deviation from the embrittlement model for the specific data set using Equations 8 and 12. The licensee must compare the normalized residuals to the allowable values in Table 7. This

surveillance data analysis must follow the criteria in §§ 50.61a(f)(6)(v) and (f)(6)(vi).

Section 50.61a(f)(6)(v)

This paragraph establishes the criteria to be satisfied in order to calculate the ΔT_{30} shift values.

Section 50.61a(f)(6)(vi)

This paragraph establishes the actions to be taken by a licensee if the criteria in § 50.61a(f)(6)(v) are not met. The licensee must submit an evaluation of the surveillance data and propose values for ΔT_{30}, considering their plant-specific surveillance data, for review and approval by the Director of NRR. The licensee must submit an evaluation of each surveillance capsule removed from the vessel after the submittal of the initial application for review and approval by the Director of NRR no later than 2 years after the capsule is withdrawn from the vessel.

Section 50.61a(g)

This paragraph provides the necessary equations and variables required by § 50.61a(f). These equations were calibrated to the surveillance database collected in accordance with the requirements of 10 CFR part 50, Appendix H. This database contained data occupying the range of variables detailed in the table below.

Variable	Symbol	Units	Values characterizing the surveillance database			
			Average	Standard deviation	Minimum	Maximum
Neutron Fluence (E>1MeV)	φt	n/cm^2	1.24E+19	1.19E+19	9.26E+15	1.07E+20
Neutron Flux (E>1MeV)	φ	n/cm^2/sec	8.69E+10	9.96E+10	2.62E+08	1.63E+12
Irradiation Temperature	T	°F	545	11	522	570
Copper content	Cu	weight %	0.140	0.084	0.010	0.410
Nickel content	Ni	weight %	0.56	0.23	0.04	1.26
Manganese content	Mn	weight %	1.31	0.26	0.58	1.96
Phosphorus content	P	weight %	0.012	0.004	0.003	0.031

Tables 1 through 7

Table 1 provides the PTS screening criteria for comparison with the licensee's calculated RT_{MAX-X} values. Tables 2 and 3 provide values to be used in § 50.61a(e). Tables 4 through 7 provide values to be used in § 50.61a(f).

V. Availability of Documents

The documents identified below are available to interested persons through one or more of the following methods, as indicated.

Public Document Room (PDR). The NRC PDR is located at 11555 Rockville Pike, Rockville, Maryland 20852.

Regulations.gov (Web). These documents may be viewed and downloaded electronically through the Federal eRulemaking Portal *http://www.regulations.gov*, Docket number NRC–2007–0008.

NRC's Electronic Reading Room (ERR). The NRC's public electronic reading room is located at *www.nrc.gov/reading-rm.html.*

Document	PDR	Web	ERR (ADAMS)
Federal Register Notice—Proposed Rule: Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events (RIN 3150–AI01), 72 FR 56275, October 3, 2007.	x	NRC–2007–0008	ML072750659
Regulatory History for RIN 3150–AI01, Proposed Rulemaking Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events.	x		ML072880444
Letter from Thomas P. Harrall, Jr., dated December 17, 2007, "Comments on Proposed Rule 10 CFR 50, Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, RIN 3150–AI01" [Identified as Duke].	x	NRC–2007–0008	ML073521542
Letter from Jack Spanner, dated December 17, 2007, "10 CFR 50.55a Proposed Rulemaking Comments RIN 3150–AI01" [Identified as EPRI].	x	NRC–2007–0008	ML073521545
Letter from James H. Riley, dated December 17, 2007, "Proposed Rulemaking—Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events (RIN 3150–AI01), 72 FR 56275, October 3, 2007" [Identified as NEI].	x	NRC–2007–0008	ML073521543
Letter from Melvin L. Arey, dated December 17, 2007, "Transmittal of PWROG Comments on the NRC Proposed Rule on Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, RIN 3150–AI01, PA–MSC–0232" [Identified as PWROG].	x	NRC–2007–0008	ML073521547
Letter from T. Moser, dated December 17, 2007, "Strategic Teaming and Resource Sharing (STARS) Comments on RIN 3150–AI01, Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, 72 FR 56275 (October 3,2007)" [Identified as STARS].	x	NRC–2007–0008	ML073610558
Federal Register Notice—Supplemental Proposed Rule: Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events (RIN 3150–AI01), 73 FR 46557 August 11, 2008.	x	NRC–2007–0008	ML081440656
Supplemental Regulatory Analysis	x	NRC–2007–0008	ML081440673
Supplemental OMB Supporting Statement	x	NRC–2007–0008	ML081440736

Document	PDR	Web	ERR (ADAMS)
Regulatory History Related to Supplemental Proposed Rule: Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, 10 CFR 50.61a (RIN 3150-AI01).	x	NRC–2007–008	ML082740222
E-mail from Todd A. Henderson, FENOC, dated September 15, 2008, ''RIN 3150-AI01: Comments on Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events'' [Identified as FENOC].	x	NRC–2007–0008	ML082600288
Letter from Dennis E. Buschbaum, dated September 9, 2008, ''Transmittal of PWROG Additional Comments on the NRC 'Proposed Rule on Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events', RIN 3150–AI01, PA–MSC0421'' [Identified as PWROG2].	x	NRC–2007–0008	ML082550705
Letter from Jack Spanner, dated September 10, 2008, ''Proposed Rulemaking Comments RIN 3150–AI01'' [Identified as EPRI2].	x	NRC–2007–0008	ML082550710
''Statistical Procedures for Assessing Surveillance Data for 10 CFR Part 50.61a''	x		ML081290654
''A Physically Based Correlation of Irradiation Induced Transition Temperature Shifts for RPV Steel''	x		ML081000630
NUREG–1806, ''Technical Basis for Revision of the Pressurized Thermal Shock (PTS) Screening Limits in the PTS Rule (10 CFR 50.61): Summary Report''.	x		ML061580318
NUREG–1874, ''Recommended Screening Limits for Pressurized Thermal Shock (PTS)''	x		ML070860156
Memorandum from Elliot to Mitchell, dated April 3, 2007, ''Development of Flaw Size Distribution Tables for Draft Proposed Title 10 of the Code of Federal Regulations (10 CFR) 50.61a''.	x		ML070950392
Memo from J. Uhle, dated May 15, 2008, ''Embrittlement Trend Curve Development for Reactor Pressure Vessel Materials''.	x		ML081120253
Draft ''Technical Basis for Revision of Regulatory Guide 1.99: NRC Guidance on Methods to Estimate the Effects of Radiation Embrittlement on the Charpy V-Notch Impact Toughness of Reactor Vessel Materials''.	x		ML081120289
''Comparison of the Predictions of RM–9 to the IVAR and RADAMO Databases''	x		ML081120365
Memo from M. Erickson Kirk, dated December 12, 2007, ''New Data from Boiling Water Reactor Vessel Integrity Program (BWRVIP) Integrated Surveillance Project (ISP)''.	x		ML081120380
''Further Evaluation of High Fluence Data''	x		ML081120600
Regulatory Guide (RG) 1.154, ''Format and Content of Plant-Specific Pressurized Thermal Shock Analysis Reports for Pressurized Water Reactors''.	x		ML003740028
Final OMB Supporting Statement Related to Final Rule: Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, 10 CFR 50.61a (RIN 3150–AI01).	x	NRC–2007–0008	ML092710534
Regulatory Analysis Related to Final Rule: Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, 10 CFR 50.61a (RIN 3150–AI01).	x	NRC–2007–0008	ML092710544
Summary and Analysis of Public Comments Related to the Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events.	x	NRC–2007–0008	ML092710402

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517) on September 3, 1997, this rule is classified as compatibility category ''NRC.'' Agreement State Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act or the provisions of Title 10 of the *Code of Federal Regulations.* Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws. Category ''NRC'' regulations do not confer regulatory authority on the State.

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical.

The NRC determined that there is only one technical standard developed that could be used for characterizing the embrittlement correlations. That standard is the American Society for Testing and Materials (ASTM) standard E–900, ''Standard Guide for Predicting Radiation-Induced Temperature Transition Shift in Reactor Vessel Materials.'' This standard contains a different embrittlement correlation than that of this final rule. However, the correlation developed by the NRC has been more recently calibrated to available data. As a result, ASTM standard E–900 is not a practical candidate for application in the technical basis for the final rule because it does not represent the broad range of conditions necessary to justify a revision to the regulations.

The ASME Code requirements are used as part of the volumetric examination analysis requirements of the final rule. ASTM Standard Practice E 185, ''Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels,'' is incorporated by reference in 10 CFR part 50, Appendix H and used to determine 30-foot-pound transition temperatures. These standards were selected for use in the final rule based on their use in other regulations within 10 CFR part 50 and their applicability to the subject of the desired requirements.

VIII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR part 51, Subpart A, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. Section 50.61a would maintain the same functional requirements for the facility

as the existing PTS rule in § 50.61. This final rule establishes screening criteria, limiting levels of embrittlement beyond which plant operation cannot continue without further plant-specific evaluation or modifications. This provides reasonable assurance that licensees operating below the screening criteria could endure a PTS event without fracture of vessel materials, thus assuring integrity of the reactor pressure vessel. In addition, the final rule is risk-informed and sufficient safety margins are maintained to ensure that any potential increases in core damage frequency and large early release frequency resulting from implementation of § 50.61a are negligible. The final rule will not significantly increase the probability or consequences of accidents, result in changes being made in the types of any effluents that may be released off site, or result in a significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with this final rule. Nonradiological plant effluents are not affected as a result of this final rule.

The NRC requested the views of the States on the environmental assessment for this rule. No comments were received. Therefore, the environmental assessment determination published on October 3, 2007 (72 FR 56275) remains unchanged.

IX. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements contained in 10 CFR part 50, that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0011.

The burden to PWR licensees using the requirements of 10 CFR 50.61a in lieu of the requirements of 10 CFR 50.61 for these information collections is estimated to average 363 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by e-mail to *INFOCOLLECTS.Resource@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503, or by e-mail to *ChristineJ.Kymn@omb.eop.gov.*

Public Protection Notification

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

X. Regulatory Analysis

The NRC has prepared a regulatory analysis of this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC concluded that implementing the final rule would provide savings to licensees projected to exceed the PTS screening criteria established in § 50.61 in their plant lifetimes. Availability of the regulatory analysis is provided in Section V, ''Availability of Documents'' of this document. No public comments were received on the proposed or supplemental regulatory analyses.

XI. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule would not have a significant economic impact on a substantial number of small entities. This final rule would affect only the licensing and operation of currently operating nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XII. Backfit Analysis

The NRC has determined that the requirements in this final rule would not constitute backfitting as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis has not been prepared for this rule.

The requirements of the current PTS rule, 10 CFR 50.61, would continue to apply to all PWR licensees and would not change as a result of this final rule. The requirements of the alternate PTS rule would not be required, but could be used by current PWR licensees at their option. Current PWR licensees choosing to implement the alternate PTS rule are required to comply with its requirements as an alternative to complying with the requirements of the current PTS rule. Because the alternate PTS rule would not be mandatory for any PWR licensee, but rather could be voluntarily implemented, the NRC has determined that this rulemaking would not constitute backfitting.

XIII. Congressional Review Act

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

List of Subjects for 10 CFR Part 50

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

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

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. Section 50.8(b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.61a, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.69, 50.70, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, and appendices A, B, E, G, H, I, J, K, M, N,O, Q, R, and S to this part.

* * * * *

■ 3. In § 50.61, paragraph (b)(1) is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

* * * * *

(b) *Requirements.* (1) For each pressurized water nuclear power reactor for which an operating license has been issued under this part or a combined license issued under Part 52 of this chapter, other than a nuclear power reactor facility for which the certification required under § 50.82(a)(1) has been submitted, the licensee shall have projected values of RT_{PTS} or RT_{MAX-X}, accepted by the NRC, for each reactor vessel beltline material. For pressurized water nuclear power reactors for which a construction permit was issued under this part before February 3, 2010 and whose reactor vessel was designed and fabricated to the 1998 Edition or earlier of the ASME Code, the projected values must be in accordance with this section or § 50.61a. For pressurized water nuclear power reactors for which a construction permit is issued under this part after February 3, 2010 and whose reactor vessel is designed and fabricated to an ASME Code after the 1998 Edition, or for which a combined license is issued under Part 52, the projected values must be in accordance with this section. When determining compliance with this section, the assessment of RT_{PTS} must use the calculation procedures described in paragraph (c)(1) and perform the evaluations described in paragraphs (c)(2) and (c)(3) of this section. The assessment must specify the bases for the projected value of RT_{PTS} for each vessel beltline material, including the assumptions regarding core loading patterns, and must specify the copper and nickel contents and the fluence value used in the calculation for each beltline material. This assessment must be updated whenever there is a significant [2] change in projected values of RT_{PTS}, or upon request for a change in the expiration date for operation of the facility.

* * * * *

■ 4. Section 50.61a is added to read as follows:

§ 50.61a Alternate fracture toughness requirements for protection against pressurized thermal shock events.

(a) *Definitions.* Terms in this section have the same meaning as those presented in 10 CFR 50.61(a), with the exception of the term ''ASME Code.''

(1) *ASME Code* means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III, Division I, ''Rules for the Construction of Nuclear Power Plant Components,'' and Section XI, Division I, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' edition and addenda and any limitations and modifications thereof as specified in § 50.55a.

(2) RT_{MAX-AW} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws found along axial weld fusion lines. RT_{MAX-AW} is determined under the provisions of paragraph (f) of this section and has units of °F.

(3) RT_{MAX-PL} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws found in plates in regions that are not associated with welds found in plates. RT_{MAX-PL} is determined under the provisions of paragraph (f) of this section and has units of °F.

(4) RT_{MAX-FO} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws in forgings that are not associated with welds found in forgings. RT_{MAX-FO} is determined under the provisions of paragraph (f) of this section and has units of °F.

(5) RT_{MAX-CW} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws found along the circumferential weld fusion lines. RT_{MAX-CW} is determined under the provisions of paragraph (f) of this section and has units of °F.

(6) RT_{MAX-X} means any or all of the material properties RT_{MAX-AW}, RT_{MAX-PL}, RT_{MAX-FO}, RT_{MAX-CW}, or sum of RT_{MAX-AW} and RT_{MAX-PL}, for a particular reactor vessel.

(7) φt means fast neutron fluence for neutrons with energies greater than 1.0 MeV. φt is utilized under the provisions of paragraph (g) of this section and has units of n/cm^2.

(8) φ means average neutron flux for neutrons with energies greater than 1.0 MeV. φ is utilized under the provisions of paragraph (g) of this section and has units of n/cm^2/sec.

(9) ΔT_{30} means the shift in the Charpy V-notch transition temperature at the 30 ft-lb energy level produced by irradiation. The ΔT_{30} value is utilized under the provisions of paragraph (g) of this section and has units of °F.

(10) *Surveillance data* means any data that demonstrates the embrittlement trends for the beltline materials, including, but not limited to, surveillance programs at other plants with or without a surveillance program integrated under 10 CFR part 50, appendix H.

(11) T_C means cold leg temperature under normal full power operating conditions, as a time-weighted average from the start of full power operation through the end of licensed operation. T_C has units of °F.

(12) *CRP* means the copper rich precipitate term in the embrittlement model from this section. The CRP term is defined in paragraph (g) of this section.

(13) *MD* means the matrix damage term in the embrittlement model for this section. The MD term is defined in paragraph (g) of this section.

(b) *Applicability.* The requirements of this section apply to each holder of an operating license for a pressurized water nuclear power reactor whose construction permit was issued before February 3, 2010 and whose reactor vessel was designed and fabricated to the ASME Boiler and Pressure Vessel Code, 1998 Edition or earlier. The requirements of this section may be implemented as an alternative to the requirements of 10 CFR 50.61.

(c) *Request for Approval.* Before the implementation of this section, each licensee shall submit a request for approval in the form of an application for a license amendment in accordance with § 50.90 together with the documentation required by paragraphs (c)(1), (c)(2), and (c)(3) of this section for review and approval by the Director of the Office of Nuclear Reactor Regulation (Director). The application must be submitted for review and approval by the Director at least three years before the limiting RT_{PTS} value calculated under 10 CFR 50.61 is projected to exceed the PTS screening criteria in 10 CFR 50.61 for plants licensed under this part.

[2] Changes to RT_{PTS} values are considered significant if either the previous value or the current value, or both values, exceed the screening criterion before the expiration of the operating license or the combined license under Part 52 of this chapter, including any renewed term, if applicable for the plant.

(1) Each licensee shall have projected values of RT_{MAX-X} for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{MAX-X} values must use the calculation procedures given in paragraphs (f) and (g) of this section. The assessment must specify the bases for the projected value of RT_{MAX-X} for each reactor vessel beltline material, including the assumptions regarding future plant operation (*e.g.,* core loading patterns, projected capacity factors); the copper (Cu), phosphorus (P), manganese (Mn), and nickel (Ni) contents; the reactor cold leg temperature (T_C); and the neutron flux and fluence values used in the calculation for each beltline material. Assessments performed under paragraphs (f)(6) and (f)(7) of this section, shall be submitted by the licensee to the Director in its license amendment application to utilize § 50.61a.

(2) Each licensee shall perform an examination and an assessment of flaws in the reactor vessel beltline as required by paragraph (e) of this section. The licensee shall verify that the requirements of paragraphs (e), (e)(1), (e)(2), and (e)(3) of this section have been met. The licensee must submit to the Director, in its application to use § 50.61a, the adjustments made to the volumetric test data to account for NDE-related uncertainties as described in paragraph (e)(1) of this section, all information required by paragraph (e)(1)(iii) of this section, and, if applicable, analyses performed under paragraphs (e)(4), (e)(5) and (e)(6) of this section.

(3) Each licensee shall compare the projected RT_{MAX-X} values for plates, forgings, axial welds, and circumferential welds to the PTS screening criteria in Table 1 of this section, for the purpose of evaluating a reactor vessel's susceptibility to fracture due to a PTS event. If any of the projected RT_{MAX-X} values are greater than the PTS screening criteria in Table 1 of this section, then the licensee may propose the compensatory actions or plant-specific analyses as required in paragraphs (d)(3) through (d)(7) of this section, as applicable, to justify operation beyond the PTS screening criteria in Table 1 of this section.

(d) *Subsequent Requirements.* Licensees who have been approved to use 10 CFR 50.61a under the requirements of paragraph (c) of this section shall comply with the requirements of this paragraph.

(1) Whenever there is a significant change in projected values of RT_{MAX-X}, so that the previous value, the current value, or both values, exceed the screening criteria before the expiration of the plant operating license; or upon the licensee's request for a change in the expiration date for operation of the facility; a re-assessment of RT_{MAX-X} values documented consistent with the requirements of paragraph (c)(1) and (c)(3) of this section must be submitted in the form of a license amendment for review and approval by the Director. If the surveillance data used to perform the re-assessment of RT_{MAX-X} values meet the requirements of paragraph (f)(6)(v) of this section, the licensee shall submit the data and the results of the analysis of the data to the Director for review and approval within one year after the capsule is withdrawn from the vessel. If the surveillance data meet the requirements of paragraph (f)(6)(vi) of this section, the licensee shall submit the data, the results of the analysis of the data, and proposed ΔT_{30} and RT_{MAX-X} values considering the surveillance data in the form of a license amendment to the Director for review and approval within two years after the capsule is withdrawn from the vessel. If the Director does not approve the assessment of RT_{MAX-X} values, then the licensee shall perform the actions required in paragraphs (d)(3) through (d)(7) of this section, as necessary, before operation beyond the PTS screening criteria in Table 1 of this section.

(2) The licensee shall verify that the requirements of paragraphs (e), (e)(1), (e)(2), and (e)(3) of this section have been met. The licensee must submit, within 120 days after completing a volumetric examination of reactor vessel beltline materials as required by ASME Code, Section XI, the adjustments made to the volumetric test data to account for NDE-related uncertainties as described in paragraph (e)(1) of this section and all information required by paragraph (e)(1)(iii) of this section in the form of a license amendment for review and approval by the Director. If a licensee is required to implement paragraphs (e)(4), (e)(5), and (e)(6) of this section, the information required in these paragraphs must be submitted in the form of a license amendment for review and approval by the Director within one year after completing a volumetric examination of reactor vessel materials as required by ASME Code, Section XI.

(3) If the value of RT_{MAX-X} is projected to exceed the PTS screening criteria, then the licensee shall implement those flux reduction programs that are reasonably practicable to avoid exceeding the PTS screening criteria. The schedule for implementation of flux reduction measures may take into account the schedule for review and anticipated approval by the Director of detailed plant-specific analyses which demonstrate acceptable risk with RT_{MAX-X} values above the PTS screening criteria due to plant modifications, new information, or new analysis techniques.

(4) If the analysis required by paragraph (d)(3) of this section indicates that no reasonably practicable flux reduction program will prevent the RT_{MAX-X} value for one or more reactor vessel beltline materials from exceeding the PTS screening criteria, then the licensee shall perform a safety analysis to determine what, if any, modifications to equipment, systems, and operation are necessary to prevent the potential for an unacceptably high probability of failure of the reactor vessel as a result of postulated PTS events. In the analysis, the licensee may determine the properties of the reactor vessel materials based on available information, research results and plant surveillance data, and may use probabilistic fracture mechanics techniques. This analysis and the description of the modifications must be submitted to the Director in the form of a license amendment at least three years before RT_{MAX-X} is projected to exceed the PTS screening criteria.

(5) After consideration of the licensee's analyses, including effects of proposed corrective actions, if any, submitted under paragraphs (d)(3) and (d)(4) of this section, the Director may, on a case-by-case basis, approve operation of the facility with RT_{MAX-X} values in excess of the PTS screening criteria. The Director will consider factors significantly affecting the potential for failure of the reactor vessel in reaching a decision. The Director shall impose the modifications to equipment, systems and operations described to meet paragraph (d)(4) of this section.

(6) If the Director concludes, under paragraph (d)(5) of this section, that operation of the facility with RT_{MAX-X} values in excess of the PTS screening criteria cannot be approved on the basis of the licensee's analyses submitted under paragraphs (d)(3) and (d)(4) of this section, then the licensee shall request a license amendment, and receive approval by the Director, before any operation beyond the PTS screening criteria. The request must be based on modifications to equipment, systems, and operation of the facility in addition to those previously proposed in the submitted analyses that would reduce the potential for failure of the reactor vessel due to PTS events, or on further analyses based on new information or improved methodology. The licensee

must show that the proposed alternatives provide reasonable assurance of adequate protection of the public health and safety.

(7) If the limiting RT_{MAX-X} value of the facility is projected to exceed the PTS screening criteria and the requirements of paragraphs (d)(3) through (d)(6) of this section cannot be satisfied, the reactor vessel beltline may be given a thermal annealing treatment under the requirements of § 50.66 to recover the fracture toughness of the material. The reactor vessel may be used only for that service period within which the predicted fracture toughness of the reactor vessel beltline materials satisfy the requirements of paragraphs (d)(1) through (d)(6) of this section, with RT_{MAX-X} values accounting for the effects of annealing and subsequent irradiation.

(e) *Examination and Flaw Assessment Requirements.* The volumetric examination results evaluated under paragraphs (e)(1), (e)(2), and (e)(3) of this section must be acquired using procedures, equipment and personnel that have been qualified under the ASME Code, Section XI, Appendix VIII, Supplement 4 and Supplement 6, as specified in 10 CFR 50.55a(b)(2)(xv).

(1) The licensee shall verify that the flaw density and size distributions within the volume described in ASME Code, Section XI,[1] Figures IWB–2500–1 and IWB–2500–2 and limited to a depth from the clad-to-base metal interface of 1-inch or 10 percent of the vessel thickness, whichever is greater, do not exceed the limits in Tables 2 and 3 of this section based on the test results from the volumetric examination. The values in Tables 2 and 3 represent actual flaw sizes. Test results from the volumetric examination may be adjusted to account for the effects of NDE-related uncertainties. The methodology to account for NDE-related uncertainties must be based on statistical data from the qualification tests and any other tests that measure the difference between the actual flaw size and the NDE detected flaw size. Licensees who adjust their test data to account for NDE-related uncertainties to verify conformance with the values in Tables 2 and 3 shall prepare and submit the methodology used to estimate the NDE uncertainty, the statistical data used to adjust the test data and an explanation of how the data was analyzed for review and approval by the Director in accordance with paragraphs (c)(2) and (d)(2) of this section. The verification of the flaw density and size distributions shall be performed line-by-line for Tables 2 and 3. If the flaw density and size distribution exceeds the limitations specified in Tables 2 and 3 of this section, the licensee shall perform the analyses required by paragraph (e)(4) of this section. If analyses are required in accordance with paragraph (e)(4) of this section, the licensee must address the effects on through-wall crack frequency (TWCF) in accordance with paragraph (e)(5) of this section and must prepare and submit a neutron fluence map in accordance with the requirements of paragraph (e)(6) of this section.

(i) The licensee shall determine the allowable number of weld flaws in the reactor vessel beltline by multiplying the values in Table 2 of this section by the total length of the reactor vessel beltline welds that were volumetrically inspected and dividing by 1000 inches of weld length.

(ii) The licensee shall determine the allowable number of plate or forging flaws in their reactor vessel beltline by multiplying the values in Table 3 of this section by the total surface area of the reactor vessel beltline plates or forgings that were volumetrically inspected and dividing by 1000 square inches.

(iii) For each flaw detected in the inspection volume described in paragraph (e)(1) with a through-wall extent equal to or greater than 0.075 inches, the licensee shall document the dimensions of the flaw, including through-wall extent and length, whether the flaw is axial or circumferential in orientation and its location within the reactor vessel, including its azimuthal and axial positions and its depth embedded from the clad-to-base metal interface.

(2) The licensee shall identify, as part of the examination required by paragraph (c)(2) of this section and any subsequent ASME Code, Section XI ultrasonic examination of the beltline welds, any flaws within the inspection volume described in paragraph (e)(1) of this section that are equal to or greater than 0.075 inches in through-wall depth, axially-oriented, and located at the clad-to-base metal interface. The licensee shall verify that these flaws do not open to the vessel inside surface using surface or visual examination technique capable of detecting and characterizing service induced cracking of the reactor vessel cladding.

(3) The licensee shall verify, as part of the examination required by paragraph (c)(2) of this section and any subsequent ASME Code, Section XI ultrasonic examination of the beltline welds, that all flaws between the clad-to-base metal interface and three-eights of the reactor vessel thickness from the interior surface are within the allowable values in ASME Code, Section XI, Table IWB–3510–1.

(4) The licensee shall perform analyses to demonstrate that the reactor vessel will have a TWCF of less than 1×10^{-6} per reactor year if the ASME Code, Section XI volumetric examination required by paragraph (c)(2) or (d)(2) of this section indicates any of the following:

(i) The flaw density and size in the inspection volume described in paragraph (e)(1) exceed the limits in Tables 2 or 3 of this section;

(ii) There are axial flaws that penetrate through the clad into the low alloy steel reactor vessel shell, at a depth equal to or greater than 0.075 inches in through-wall extent from the clad-to-base metal interface; or

(iii) Any flaws between the clad-to-base metal interface and three-eighths[2] of the vessel thickness exceed the size allowable in ASME Code, Section XI, Table IWB–3510–1.

(5) The analyses required by paragraph (e)(4) of this section must address the effects on TWCF of the known sizes and locations of all flaws detected by the ASME Code, Section XI, Appendix VIII, Supplement 4 and Supplement 6 ultrasonic examination out to three-eights of the vessel thickness from the inner surface, and may also take into account other reactor vessel-specific information, including fracture toughness information.

(6) For all flaw assessments performed in accordance with paragraph (e)(4) of this section, the licensee shall prepare and submit a neutron fluence map, projected to the date of license expiration, for the reactor vessel beltline clad-to-base metal interface and indexed in a manner that allows the determination of the neutron fluence at the location of the detected flaws.

(f) *Calculation of RT_{MAX-X} values.* Each licensee shall calculate RT_{MAX-X} values for each reactor vessel beltline material using φt. The neutron flux (φ[t]), must be calculated using a methodology that has been benchmarked to experimental measurements and with quantified uncertainties and possible biases.[3]

[1] For forgings susceptible to underclad cracking the determination of the flaw density for that forging from the licensee's inspection shall exclude those indications identified as underclad cracks.

[2] Because flaws greater than three-eights of the vessel wall thickness from the inside surface do not contribute to TWCF, flaws greater than three-eights of the vessel wall thickness from the inside surface need not be analyzed for their contribution to PTS.

[3] Regulatory Guide 1.190 dated March 2001, establishes acceptable methods for determining neutron flux.

(1) The values of RT_{MAX-AW}, RT_{MAX-PL}, RT_{MAX-FO}, and RT_{MAX-CW} must be determined using Equations 1 through 4 of this section. When calculating RT_{MAX-AW} using Equation 1, RT_{MAX-AW} is the maximum value of ($RT_{NDT(U)} + \Delta T_{30}$) for the weld and for the adjoining plates. When calculating RT_{MAX-CW} using Equation 4, RT_{MAX-CW} is the maximum value of ($RT_{NDT(U)} + \Delta T_{30}$) for the circumferential weld and for the adjoining plates or forgings.

(2) The values of ΔT_{30} must be determined using Equations 5, 6 and 7 of this section, unless the conditions specified in paragraph (f)(6)(v) of this section are not met, for each axial weld, plate, forging, and circumferential weld. The ΔT_{30} value for each axial weld calculated as specified by Equation 1 of this section must be calculated for the maximum fluence ($\varphi t_{AXIAL-WELD}$) occurring along a particular axial weld at the clad-to-base metal interface. The ΔT_{30} value for each plate calculated as specified by Equation 1 of this section must also be calculated using the same value of $\varphi t_{AXIAL-WELD}$ used for the axial weld. The ΔT_{30} values in Equation 1 shall be calculated for the weld itself and each adjoining plate. The ΔT_{30} value for each plate or forging calculated as specified by Equations 2 and 3 of this section must be calculated for the maximum fluence (φt_{MAX}) occurring at the clad-to-base metal interface over the entire area of each plate or forging. In Equation 4, the fluence ($\varphi t_{WELD-CIRC}$) value used for calculating the plate, forging, and circumferential weld ΔT_{30} value is the maximum fluence occurring for each material along the circumferential weld at the clad-to-base metal interface. The ΔT_{30} values in Equation 4 shall be calculated for the circumferential weld and for the adjoining plates or forgings. If the conditions specified in paragraph (f)(6)(v) of this section are not met, licensees must propose ΔT_{30} and RT_{MAX-X} values in accordance with paragraph (f)(6)(vi) of this section.

(3) The values of Cu, Mn, P, and Ni in Equations 6 and 7 of this section must represent the best estimate values for the material. For a plate or forging, the best estimate value is normally the mean of the measured values for that plate or forging. For a weld, the best estimate value is normally the mean of the measured values for a weld deposit made using the same weld wire heat number as the critical vessel weld. If these values are not available, either the upper limiting values given in the material specifications to which the vessel material was fabricated, or conservative estimates (*i.e.,* mean plus one standard deviation) based on generic data [4] as shown in Table 4 of this section for P and Mn, must be used.

(4) The values of $RT_{NDT(U)}$ must be evaluated according to the procedures in the ASME Code, Section III, paragraph NB–2331. If any other method is used for this evaluation, the licensee shall submit the proposed method for review and approval by the Director along with the calculation of RT_{MAX-X} values required in paragraph (c)(1) of this section.

(i) If a measured value of $RT_{NDT(U)}$ is not available, a generic mean value of $RT_{NDT(U)}$ for the class [5] of material must be used if there are sufficient test results to establish a mean.

(ii) The following generic mean values of $RT_{NDT(U)}$ must be used unless justification for different values is provided: 0 °F for welds made with Linde 80 weld flux; and −56 °F for welds made with Linde 0091, 1092, and 124 and ARCOS B–5 weld fluxes.

(5) The value of T_C in Equation 6 of this section must represent the time-weighted average of the reactor cold leg temperature under normal operating full power conditions from the beginning of full power operation through the end of licensed operation.

(6) The licensee shall verify that an appropriate RT_{MAX-X} value has been calculated for each reactor vessel beltline material by considering plant-specific information that could affect the use of the model (*i.e.,* Equations 5, 6 and 7) of this section for the determination of a material's ΔT_{30} value.

(i) The licensee shall evaluate the results from a plant-specific or integrated surveillance program if the surveillance data satisfy the criteria described in paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section:

(A) The surveillance material must be a heat-specific match for one or more of the materials for which RT_{MAX-X} is being calculated. The 30-foot-pound transition temperature must be determined as specified by the requirements of 10 CFR part 50, Appendix H.

(B) If three or more surveillance data points measured at three or more different neutron fluences exist for a specific material, the licensee shall determine if the surveillance data show a significantly different trend than the embrittlement model predicts. This must be achieved by evaluating the surveillance data for consistency with the embrittlement model by following the procedures specified by paragraphs (f)(6)(ii), (f)(6)(iii), and (f)(6)(iv) of this section. If fewer than three surveillance data points exist for a specific material, then the embrittlement model must be used without performing the consistency check.

(ii) The licensee shall estimate the mean deviation from the embrittlement model for the specific data set (*i.e.,* a group of surveillance data points representative of a given material). The mean deviation from the embrittlement model for a given data set must be calculated using Equations 8 and 9 of this section. The mean deviation for the data set must be compared to the maximum heat-average residual given in Table 5 or derived using Equation 10 of this section. The maximum heat-average residual is based on the material group into which the surveillance material falls and the number of surveillance data points. For surveillance data sets with greater than 8 data points, the maximum credible heat-average residual must be calculated using Equation 10 of this section. The value of σ used in Equation 10 of this section must be obtained from Table 5 of this section.

(iii) The licensee shall estimate the slope of the embrittlement model residuals (estimated using Equation 8) plotted as a function of the base 10 logarithm of neutron fluence for the specific data set. The licensee shall estimate the T-statistic for this slope (T_{SURV}) using Equation 11 and compare this value to the maximum permissible T-statistic (T_{MAX}) in Table 6. For surveillance data sets with greater than 15 data points, the T_{MAX} value must be calculated using Student's T distribution with a significance level (α) of 1 percent for a one-tailed test.

(iv) The licensee shall estimate the two largest positive deviations (*i.e.,* outliers) from the embrittlement model for the specific data set using Equations 8 and 12. The licensee shall compare the largest normalized residual (r^*) to the appropriate allowable value from the third column in Table 7 and the second largest normalized residual to the appropriate allowable value from the second column in Table 7.

(v) The ΔT_{30} value must be determined using Equations 5, 6, and 7 of this section if all three of the following criteria are satisfied:

(A) The mean deviation from the embrittlement model for the data set is equal to or less than the value in Table 5 or the value derived using Equation 10 of this section;

(B) The T-statistic for the slope (T_{SURV}) estimated using Equation 11 is

[4] Data from reactor vessels fabricated to the same material specification in the same shop as the vessel in question and in the same time is an example of ''generic data.''

[5] The class of material for estimating $RT_{NDT(U)}$ must be determined by the type of welding flux (Linde 80, or other) for welds or by the material specification for base metal.

equal to or less than the Maximum permissible T-statistic (T_{MAX}) in Table 6; and

(C) The largest normalized residual value is equal to or less than the appropriate allowable value from the third column in Table 7 and the second largest normalized residual value is equal to or less than the appropriate allowable value from the second column in Table 7. If any of these criteria is not satisfied, the licensee must propose ΔT_{30} and RT_{MAX-X} values in accordance with paragraph (f)(6)(vi) of this section.

(vi) If any of the criteria described in paragraph (f)(6)(v) of this section are not satisfied, the licensee shall review the data base for that heat in detail, including all parameters used in Equations 5, 6, and 7 of this section and the data used to determine the baseline Charpy V-notch curve for the material in an unirradiated condition. The licensee shall submit an evaluation of the surveillance data to the NRC and shall propose ΔT_{30} and RT_{MAX-X} values, considering their plant-specific surveillance data, to be used for evaluation relative to the acceptance criteria of this rule. These evaluations must be submitted for review and approval by the Director in the form of a license amendment in accordance with the requirements of paragraphs (c)(1) and (d)(1) of this section.

(7) The licensee shall report any information that significantly influences the RT_{MAX-X} value to the Director in accordance with the requirements of paragraphs (c)(1) and (d)(1) of this section.

(g) *Equations and variables used in this section.*

Equation 1: $RT_{MAX-AW} = MAX \{[RT_{NDT(U)-plate} + \Delta T_{30-plate}], [RT_{NDT(U)-axial\ weld} + \Delta T_{30-axial\ weld}]\}$

Equation 2: $RT_{MAX-PL} = RT_{NDT(U)-plate} + \Delta T_{30-plate}$

Equation 3: $RT_{MAX-FO} = RT_{NDT(U)-forging} + \Delta T_{30-forging}$

Equation 4: $RT_{MAX-CW} = MAX \{[RT_{NDT(U)-plate} + \Delta T_{30-plate}], [RT_{NDT(U)-circweld} + \Delta T_{30-circweld}], [RT_{NDT(U)-forging} + \Delta T_{30-forging}]\}$

Equation 5: $\Delta T_{30} = MD + CRP$

Equation 6: $MD = A \times (1 - 0.001718 \times T_C) \times (1 + 6.13 \times P \times Mn^{2.471}) \times \varphi t_e^{0.5}$

Equation 7: $CRP = B \times (1 + 3.77 \times Ni^{1.191}) \times f(Cu_e,P) \times g(Cu_e,Ni,\varphi t_e)$

Where:

P [wt-%] = phosphorus content

Mn [wt-%] = manganese content

Ni [wt-%] = nickel content

Cu [wt-%] = copper content

$A = 1.140 \times 10^{-7}$ for forgings

$= 1.561 \times 10^{-7}$ for plates

$= 1.417 \times 10^{-7}$ for welds

B = 102.3 for forgings

= 102.5 for plates in non-Combustion Engineering manufactured vessels

= 135.2 for plates in Combustion Engineering vessels

= 155.0 for welds

$\varphi t_e = \varphi t$ for $\varphi \geq 4.39 \times 10^{10}$ n/cm²/sec

$= \varphi t \times (4.39 \times 10^{10}/\varphi)^{0.2595}$ for $\varphi < 4.39 \times 10^{10}$ n/cm²/sec

Where:

φ [n/cm²/sec] = average neutron flux

t [sec] = time that the reactor has been in full power operation

φt [n/cm²] = $\varphi \times t$

$f(Cu_e,P) = 0$ for $Cu \leq 0.072$

$= [Cu_e - 0.072]^{0.668}$ for $Cu > 0.072$ and $P \leq 0.008$

$= [Cu_e - 0.072 + 1.359 \times (P - 0.008)]^{0.668}$ for $Cu > 0.072$ and $P > 0.008$

and $Cu_e = 0$ for $Cu \leq 0.072$

= MIN (Cu, maximum Cu_e) for $Cu > 0.072$ and maximum $Cu_e = 0.243$ for Linde 80 welds

= 0.301 for all other materials

$g(Cu_e,Ni,\varphi t_e) = 0.5 + (0.5 \times \tanh \{[\log_{10}(\varphi t_e) + (1.1390 \times Cu_e) - (0.448 \times Ni) - 18.120]/0.629\}$

Equation 8: Residual (r) = measured ΔT_{30} − predicted ΔT_{30} (by Equations 5, 6 and 7)

Equation 9: Mean deviation for a data set of n data points =

$$(1/n) \times \sum_{i=1}^{n} r_i$$

Equation 10: Maximum credible heat-average residual = $2.33\sigma/n^{0.5}$

Where:

n = number of surveillance data points (sample size) in the specific data set

σ = standard deviation of the residuals about the model for a relevant material group given in Table 5.

$$\text{Equation 11: } T_{SURV} = \frac{m}{(se(m))}$$

Where:

m is the slope of a plot of all of the *r* values (estimated using Equation 8) versus the base 10 logarithm of the neutron fluence for each r value. The slope shall be estimated using the method of least squares.

(*se(m)*) is the least squares estimate of the standard-error associated with the estimated slope value *m*.

$$\text{Equation 12: } r^* = \frac{r}{\sigma}$$

Where:

r is defined using Equation 8 and σ is given in Table 5.

TABLE 1—PTS SCREENING CRITERIA

Product form and RT_{MAX-X} Values	RT_{MAX-X} limits [°F] for different vessel wall thicknesses[6] (T_{WALL})		
	$T_{WALL} \leq 9.5$ in.	9.5 in. < $T_{WALL} \leq 10.5$ in.	10.5 in. < $T_{WALL} \leq 11.5$ in.
Axial Weld RT_{MAX-AW}	269	230	222
Plate RT_{MAX-PL}	356	305	293
Forging without underclad cracks RT_{MAX-FO}[7]	356	305	293
Axial Weld and Plate RT_{MAX-AW} + RT_{MAX-PL}	538	476	445
Circumferential Weld RT_{MAX-CW}[8]	312	277	269
Forging with underclad cracks RT_{MAX-FO}[9]	246	241	239

[6] Wall thickness is the beltline wall thickness including the clad thickness.

[7] Forgings without underclad cracks apply to forgings for which no underclad cracks have been detected and that were fabricated in accordance with Regulatory Guide 1.43.

[8] RT_{PTS} limits contribute 1×10^{-8} per reactor year to the reactor vessel TWCF.

[9] Forgings with underclad cracks apply to forgings that have detected underclad cracking or were not fabricated in accordance with Regulatory Guide 1.43.

TABLE 2—ALLOWABLE NUMBER OF FLAWS IN WELDS

Through–wall extent, TWE [in.]		Maximum number of flaws per 1000-inches of weld length in the inspection volume that are greater than or equal to TWE_{MIN} and less than TWE_{MAX}
TWE_{MIN}	TWE_{MAX}	
0	0.075	No Limit
0.075	0.475	166.70
0.125	0.475	90.80
0.175	0.475	22.82
0.225	0.475	8.66
0.275	0.475	4.01
0.325	0.475	3.01
0.375	0.475	1.49
0.425	0.475	1.00
0.475	Infinite	0.00

TABLE 3—ALLOWABLE NUMBER OF FLAWS IN PLATES AND FORGINGS

Through-wall extent, TWE [in.]		Maximum number of flaws per 1000 square-inches of inside surface area in the inspection volume that are greater than or equal to TWE_{MIN} and less than TWE_{MAX}. This flaw density does not include underclad cracks in forgings.
TWE_{MIN}	TWE_{MAX}	
0	0.075	No Limit
0.075	0.375	8.05
0.125	0.375	3.15
0.175	0.375	0.85
0.225	0.375	0.29
0.275	0.375	0.08
0.325	0.375	0.01
0.375	Infinite	0.00

TABLE 4—CONSERVATIVE ESTIMATES FOR CHEMICAL ELEMENT WEIGHT PERCENTAGES

Materials	P	Mn
Plates	0.014	1.45
Forgings	0.016	1.11

TABLE 4—CONSERVATIVE ESTIMATES FOR CHEMICAL ELEMENT WEIGHT PERCENTAGES—Continued

Materials	P	Mn
Welds	0.019	1.63

TABLE 5—MAXIMUM HEAT-AVERAGE RESIDUAL [°F] FOR RELEVANT MATERIAL GROUPS BY NUMBER OF AVAILABLE DATA POINTS

[Significance level = 1%]

Material group	σ [°F]	Number of available data points					
		3	4	5	6	7	8
Welds, for Cu > 0.072	26.4	35.5	30.8	27.5	25.1	23.2	21.7
Plates, for Cu > 0.072	21.2	28.5	24.7	22.1	20.2	18.7	17.5
Forgings, for Cu > 0.072	19.6	26.4	22.8	20.4	18.6	17.3	16.1
Weld, Plate or Forging, for Cu ≤ 0.072	18.6	25.0	21.7	19.4	17.7	16.4	15.3

TABLE 6—T_{MAX} VALUES FOR THE SLOPE DEVIATION TEST

[Significance Level = 1%]

Number of available data points (n)	T_{MAX}
3	31.82
4	6.96
5	4.54
6	3.75
7	3.36

TABLE 6—T_{MAX} VALUES FOR THE SLOPE DEVIATION TEST—Continued

[Significance Level = 1%]

Number of available data points (n)	T_{MAX}
8	3.14
9	3.00
10	2.90
11	2.82
12	2.76

TABLE 6—T_{MAX} VALUES FOR THE SLOPE DEVIATION TEST—Continued

[Significance Level = 1%]

Number of available data points (n)	T_{MAX}
14	2.68
15	2.65

TABLE 7—THRESHOLD VALUES FOR THE OUTLIER DEVIATION TEST

[Significance Level = 1%]

Number of available data points (n)	Second largest allowable normalized residual value (r*)	Largest allowable normalized residual value (r*)
3	1.55	2.71
4	1.73	2.81
5	1.84	2.88
6	1.93	2.93
7	2.00	2.98
8	2.05	3.02
9	2.11	3.06
10	2.16	3.09
11	2.19	3.12
12	2.23	3.14
13	2.26	3.17
14	2.29	3.19
15	2.32	3.21

Dated at Rockville, Maryland, this 28th day of December 2009.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. E9–31146 Filed 12–31–09; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 1, 2, 4, 5, 100, 101, 102, 104, 110, 113, 114, 201, and 300

[Notice 2009–32]

Privacy Act, Government in the Sunshine Act, Freedom of Information Act (''FOIA''), and Federal Election Campaign Act (''FECA'') Rules; Corrections

AGENCY: Federal Election Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is making technical amendments to various sections of the Privacy Act, Government in the Sunshine Act, FOIA, and FECA rules.

DATES: Effective January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Mr. Eugene Lynch, Paralegal, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of these corrections were published as part of a continuing series of regulations the Commission promulgated implementing the Privacy Act of 1974, Public Law 93–579, 88 Stat. 1896 (1974), the Government in the Sunshine Act of 1976, Public Law 94–409, 90 Stat. 1241 (1976), the Freedom of Information Act of 1966, as amended, 5 U.S.C. 552, and the Federal Election Campaign Act (''FECA'') of 1971, as amended, 2 U.S.C. 431, *et seq.* Because these corrections are merely technical, this is not a substantive rule requiring notice and comment under the Administrative Procedure Act, 5 U.S.C. 553. Under the ''good cause'' exception to the notice and comment requirements, 5 U.S.C. 553(b)(B) and (d)(3), these corrections are effective upon publication. Thus, the corrected final rules are effective January 4, 2010.

Corrections to Privacy Act Rules in Part 1 of Title 11 of the Code of Federal Regulations

A. Correction to 11 CFR 1.2

The Commission is removing the definition of ''Commissioners'' and replacing it with a definition of ''Commissioner,'' to read as follows: ''*Commissioner* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).'' The purpose of this change is to make the definition of ''Commissioner'' consistent in Commission regulations. The Commission is also placing the definitions in alphabetical order to assist the reader in locating a specific definition.

B. Correction to 11 CFR 1.3

The Commission is correcting an obsolete reference in paragraph (b) of this section to conform it to updated internal agency procedures by replacing the term ''Staff Director'' with the term ''Chief Privacy Officer.''

C. Correction to 11 CFR 1.14

The Commission is correcting a typographical error in paragraph (a) of this section by replacing the semicolon after the phrase ''2 U.S.C. 438(b)'' with a comma.

Corrections to Government in the Sunshine Act Rules in Part 2 of Title 11 of the Code of Federal Regulations

A. Correction to 11 CFR 2.4

The Commission is correcting erroneous punctuation in paragraph (b)(1) of this section by replacing the period after the last word of the paragraph, ''practices,'' with a semicolon.

B. Correction to 11 CFR 2.6

The Commission is correcting erroneous punctuation in paragraph (c) of this section by inserting a comma after the last instance of the word ''meeting.''

Corrections to Freedom of Information Act Rules in Part 4 of Title 11 of the Code of Federal Regulations

A. Corrections to 11 CFR 4.5

The Commission is correcting a typographical error in paragraph (a)(4) of this section by removing the letter ''s'' in the word ''works'' in the second sentence, so that the resulting word is ''work.'' In addition, the Commission is correcting missing words and capitalization in paragraphs (a)(4)(i), (iii), and (iv) of this section by inserting the word ''Chief'' in front of the word ''FOIA'' in all instances where ''FOIA'' appears. Also, in paragraphs (a)(4)(i) and (iii) of this section, the Commission is capitalizing the first letter of the word ''officer,'' so that it reads ''Officer.'' In addition, the Commission is correcting a typographical error in paragraph (b) of this section by replacing the colon after ''11 CFR 4.5(a)(7)'' with a comma. Finally, the Commission is correcting a typographical error in paragraph (b)(2)(i) of this section by replacing the comma after the word ''pendency'' with a semicolon.

B. Corrections to 11 CFR 4.7

The Commission is correcting a missing word and a typographical error in paragraph (b)(1) of this section by replacing the term ''FOIA officer'' with ''Chief FOIA Officer.''

C. Correction to 11 CFR 4.7, 4.8, and 5.5

The Commission is inserting the word ''Chief'' directly before all instances of the term ''FOIA Officer'' in paragraph (i) of section 4.7, paragraph (c) of section 4.8, and paragraph (c) of section 5.5.

D. Correction to 11 CFR 4.9

The Commission is correcting a typographical error in paragraph (c)(1)(iv) of this section, by changing the second sentence of the paragraph to read as follows: ''Requests from persons for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication.''

Corrections to FECA Rules in Subchapters A and C in Title 11 of the Code of Federal Regulations

A. Correction to 11 CFR 100.89

The Commission is correcting an incorrect citation in paragraph (f) of this section by replacing the reference to 11 CFR 100.78(d) at the end of the section with ''paragraph (d) of this section.''

B. Corrections to 11 CFR 101.3

The Commission is correcting two incorrect citations in this section by replacing the references to 11 CFR 100.7(b)(1) and 100.8(b)(1) with 11 CFR 100.72 and 100.131, respectively.

C. Correction to 11 CFR 102.15

The Commission is correcting the heading to this section by replacing the reference to 2 U.S.C. 432(a)(3) with 2 U.S.C. 432(b)(3).

D. Corrections to 11 CFR 104.3

The Commission is correcting incorrect citations in paragraphs (a)(3)(vii)(B), (b)(2)(iii)(A), (b)(4)(iii), (d), and (d)(4) of this section by replacing all references to 11 CFR 100.7(b)(22) with 11 CFR 100.83, and by replacing all references to 100.8(b)(24) with 100.143.

E. Corrections to 11 CFR 104.8

The Commission is correcting two incorrect citations in paragraph (g) this section, by replacing the references to 11 CFR 100.7(b)(22) and 100.8(b)(24) with 11 CFR 100.83 and 100.143, respectively. The Commission is also correcting an incorrect citation in paragraph (g)(2) by replacing the reference to 11 CFR 100.7(b)(22)(iii) with 11 CFR 100.83(c).

F. Correction to 11 CFR 110.1

The Commission is correcting an incorrect citation in paragraph (a) of this section by changing the reference to 11 CFR 110.10 to 11 CFR 100.10.

G. Correction to 11 CFR 110.14

The Commission is correcting an inadvertent duplication of language in paragraph (f)(2)(i) of this section, governing expenditures by delegates for public political advertising that refers to candidates for public office. The duplicated language is from paragraph (f)(2)(ii) of this section, which concerns expenditures by delegates for communications that are not coordinated with candidates. As revised, paragraph (f)(2)(i) provides that delegate communications are in-kind contributions to a Federal candidate if they are coordinated communications under 11 CFR 109.21. This change is necessary to bring the rules governing delegates into alignment with the rules governing delegate committees in 11 CFR 110.14(i)(2) and coordinated communications in 11 CFR 109.21.

H. Correction to 11 CFR 110.17

The Commission is correcting an incorrect citation in paragraph (a) of this section by replacing the reference to 11 CFR 110.7 with 11 CFR 109.32. Thus, the relevant part of the sentence will read ''* * * expenditures established by 11 CFR 109.32 and 110.8 shall be increased * * *''

I. Correction to 11 CFR 113.1

The Commission is correcting the first sentence of paragraph (g)(8) of this section by deleting the word ''proposed'' directly before the word ''paragraphs.''

J. Corrections to 11 CFR 114.10

The Commission is removing the Editorial Note at the end of this section, on page 234 of the 2009 Code of Federal Regulations, in its entirety. In addition, the Commission is correcting a citation in paragraph (e)(2)(ii) of this section by replacing the reference to 11 CFR 104.14 with 11 CFR 104.20(b).

K. Corrections to 11 CFR 201.2

The Commission is changing the definition of ''Commissioner'' in paragraph (c) of this section to read as follows: ''*Commissioner* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).'' The purpose of this change is to make the definition of ''Commissioner'' consistent in Commission regulations.

L. Correction to 11 CFR 300.31

The Commission is correcting a typographical error in paragraph (g) of this section by replacing the phrase ''State, district, or local committee or a political party'' with ''State, district, or local committee of a political party.''

M. Correction to the Heading of 11 CFR 300.63

The Commission is correcting the heading to this section by removing the word ''party.''

Corrections to Various Rules Throughout Title 11, Chapter 1 of the Code of Federal Regulations

A. Corrections to the Authority Citations for 11 CFR Parts 2, 101, 102, 113, 114, 201, and 300

The Commission is correcting the authority citations located in each of these parts. For part 2, the Commission is removing the redundant reference to the public law from the authority citation. For parts 101, 102, 113, 114, 201, and 300, the Commission is adding the word ''and'' before the last statutory reference in the authority citations to conform them to other authority citations in 11 CFR, and to make clear that there are no additional statutory references.

List of Subjects

11 CFR Part 1

Privacy.

11 CFR Part 2

Sunshine Act.

11 CFR Part 4

Freedom of information.

11 CFR Part 5

Archives and records.

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 113

Campaign funds.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 201

Administrative practice and procedure.

11 CFR Part 300

Campaign funds, Nonprofit organizations, Political committees and parties, Political candidates, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 11 CFR parts 1, 2, 4, and 5, and subchapters A and C of chapter 1 of title 11 of the Code of Federal Regulations, are amended as follows:

PART 1—PRIVACY ACT

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

Authority: 5 U.S.C. 552a.

■ 2. In § 1.2, arrange the existing definitions in alphabetical order, remove the definition of ''Commissioners,'' and add a definition of ''Commissioner'' to read as follows:

§ 1.2 Definitions.

* * * * *

Commissioner means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

* * * * *

§ 1.3 [Amended]

■ 3. In paragraph (b) of § 1.3, remove the words ''Staff Director'' and add, in their place, the words ''Chief Privacy Officer''.

§ 1.14 [Amended]

■ 4. In paragraph (a) of § 1.14, remove the semicolon after ''2 U.S.C. 438(b)'' and add, in its place, a comma.

PART 2—SUNSHINE REGULATIONS; MEETINGS

■ 5. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 552b.

§ 2.4 [Amended]

■ 6. In paragraph (b)(1) introductory text of § 2.4, remove the period after the word ''practices'' and add, in its place, a semicolon.

§ 2.6 [Amended]

■ 7. In paragraph (c) of § 2.6, add a comma after the last occurrence of the word ''meeting.''

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

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

Authority: 5 U.S.C. 552, as amended.

§ 4.5 [Amended]

■ 9. Amend § 4.5 as follows:

■ a. In the introductory text of paragraph (a)(4), remove the letter ''s'' from the word ''works'' in the second sentence.

■ b. In paragraphs (a)(4)(i) and (iii), remove the words ''FOIA officer'' and add, in their place, the words ''Chief FOIA Officer.''

■ c. In paragraph (a)(4)(iv), remove the words ''FOIA Officer'' in both places where they occur and add, in their place, the words ''Chief FOIA Officer.''

■ d. In the introductory text of paragraph (b), remove the colon after ''11 CFR 4.5(a)(7)'' and add, in its place, a semicolon.

■ e. In paragraph (b)(2)(i), remove the comma after the word ''pendency'' and add, in its place, a semicolon.

§ 4.7 [Amended]

■ 10. In paragraph (b)(1) of § 4.7, remove the words ''FOIA officer'' and add, in their place, the words ''Chief FOIA Officer''.

§ 4.8 [Amended]

■ 11. In paragraph (c) of § 4.8, remove the words ''FOIA Officer'' and add, in their place, the words ''Chief FOIA Officer''.

■ 12. In paragraph (c)(1)(iv) of § 4.9, the second sentence is revised to read as follows:

§ 4.9 Fees.

* * * * *

(c) * * *

(1) * * *

(iv) * * * Requests from persons for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. * * *

* * * * *

PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

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

Authority: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a), and 31 U.S.C. 9701.

§ 5.5 [Amended]

■ 14. In paragraph (c) of § 5.5, remove the words ''FOIA officer'' and add, in their place, the words ''Chief FOIA Officer''.

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

■ 15. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

§ 100.89 [Amended]

■ 16. In paragraph (f) of § 100.89, remove ''100.78(d)'' and add, in its place, the words ''paragraph (d) of this section''.

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

■ 17. The authority citation for part 101 is revised to read as follows:

Authority: 2 U.S.C. 432(e), 434(a)(11), and 438(a)(8).

§ 101.3 [Amended]

■ 18. In the table below, for the section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
101.3	100.7(b)(1)	100.72
101.3	100.8(b)(1)	100.131

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

■ 19. The authority citation for part 102 is revised to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), and 441(d).

■ 20. The heading of § 102.15 is revised to read as follows:

§ 102.15 Commingled funds (2 U.S.C. 432(b)(3)).

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2 U.S.C. 434)

■ 21. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36 U.S.C. 510.

§§ 104.3 and 104.8 [Amended]

■ 22. In the table below, for the section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
104.3(a)(3)(vii)(B)	100.7(b)(22)	100.83
104.3(a)(3)(vii)(B)	100.8(b)(24)	100.143
104.3(b)(2)(iii)(A)	100.7(b)(22)	100.83
104.3(b)(2)(iii)(A)	100.8(b)(24)	100.143
104.3(b)(4)(iii)	100.7(b)(22)	100.83
104.3(b)(4)(iii)	100.8(b)(24)	100.143
104.3(d)	100.7(b)(22)	100.83
104.3(d)(4)	100.7(b)(22)	100.83
104.3(d)(4)	100.8(b)(24)	100.143

Section	Remove	Add
104.8(g)	100.7(b)(22)	100.83
104.8(g)	100.8(b)(24)	100.143
104.8(g)(2)	100.7(b)(22)(iii)	100.83(c)

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 23. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 36 U.S.C. 510.

§ 110.1 [Amended]

■ 24. In paragraph (a) of § 110.1, remove ''110.10'' and add, in its place, ''100.1''.

■ 25. Paragraph (f)(2)(i) introductory text of § 110.14 is revised to read as follows:

§ 110.14 Contributions to and expenditures by delegates and delegate committees.

* * * * *

(f) * * *

(2) * * *

(i) Such expenditures are in-kind contributions to a Federal candidate if they are coordinated communications under 11 CFR 109.21.

* * * * *

■ 26. In paragraph (a) introductory text of § 110.17, remove ''110.7'' and add, in its place, ''109.32''.

PART 113—PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS

■ 27. The authority citation for part 113 is revised to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, and 441a.

■ 28. In paragraph (g)(8) of § 113.1, the first sentence is revised to read as follows:

§ 113.1 Definitions (2 U.S.C. 439a).

* * * * *

(g) * * *

(8) *Recordkeeping.* For those uses of campaign funds described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that involve both personal use and either campaign or office-holder use, a contemporaneous log or other record must be kept to document the dates and expenses related to the personal use of the campaign funds. * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 29. The authority citation for part 114 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), and 441b.

§ 114.10 [Amended]

■ 30. In paragraph (e)(2)(ii) of § 114.10, remove ''104.14'' and add, in its place, ''104.20(b)''.

PART 201—EX PARTE COMMUNICATIONS

■ 31. The authority citation for part 201 is revised read as follows:

Authority: 2 U.S.C. 437d(a)(8), 437f, 438(a)(8), and 438(b); 26 U.S.C. 9007, 9008, 9009(b), 9038, and 9039(b).

■ 32. Paragraph (c) of § 201.2 is revised to read as follows:

§ 201.2 Definitions.

* * * * *

(c) *Commissioner* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

* * * * *

PART 300—NON-FEDERAL FUNDS

■ 33. The authority citation for part 300 is revised read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, and 453.

■ 34. Paragraph (g) of § 300.31 is revised to read as follows:

§ 300.31 Receipt of Levin Funds.

* * * * *

(g) *Safe Harbor.* The use of a common vendor for fundraising by more than one State, district, or local committee of a political party, or the agent of such a committee, does not constitute joint fundraising within the meaning of this section.

■ 35. The heading of § 300.63 is revised to read as follows:

§ 300.63 Exception for State candidates (2 U.S.C. 441i(e)(2)).

* * * * *

On behalf of the Commission.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–30797 Filed 12–31–09; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM423; Special Conditions No. 25–399–SC]

Special Conditions: Airbus Model A340 Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A340 series airplanes. These airplanes will have a novel or unusual design feature(s) associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 28, 2009.

We must receive your comments by February 18, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM423, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM423. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2785; facsimile (425) 227–2195; e-mail *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 15, 2009, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac, Cedex, France, applied for a design change to Type Certificate No. A43NM for installation of seats that include non-traditional, large, non-metallic panels in Airbus Model A340 series airplanes. These airplanes, currently approved under Type Certificate No. A43NM, are swept-wing, conventional-tail, twin-engine, turbofan-powered, twin-aisle, large-sized transport-category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. A43NM do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then-recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat-release and smoke-emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage-bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14, Code of Federal Regulations (14 CFR), part 25, appendix F, parts IV and V, heat-release and smoke-emission requirements.

Type Certification Basis

Under the provisions of § 21.101, Airbus must show that the Model A340 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A43NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A43NM are as follows: 14 CFR part 25, as amended by Amendments 25–1 through 25–63; certain regulations at later Amendments 25–65, 25–66, and 25–77; and Amendment 25–64 with exceptions. Refer to Type Certificate Data Sheet (TCDS) A43NM for a complete description of the certification basis for that model, including certain special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A340 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model A340 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Model A340 series airplanes will incorporate the following novel or unusual design features: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of occupants of the cabin in the case of fire. These seats are considered a novel design for transport-category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels. To provide a level of safety that is equivalent to that provided by the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions, required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

Definition of ''Non-Traditional, Large, Non-Metallic Panel''

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single

component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: seat backs and bottoms, leg/foot rests, kick panels, back shells, credenzas, and associated furniture. Examples of traditional exempted parts of the seat include: arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors, and shrouds.

Clarification of ''Exposed''

''Exposed'' is considered to include those panels directly exposed to the passenger cabin in the traditional sense, plus those panels enveloped such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials still must comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s, the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large-surface-area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire survival time. Materials that comply with the standards (i.e., § 25.853, entitled ''Compartment interiors,'' as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes over materials that do not comply.

At the time these standards were written, the FAA explored the potential application of the requirements of heat-release and smoke-emission requirements to seats. The seat frame itself was not a concern because it was primarily made of aluminum and only small amounts of non-metallic materials. It was determined that the overall effect on survivability was negligible, whether or not the food trays met the heat-release and smoke-emission requirements. The requirements, therefore, did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985), and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded ''because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats.''

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: ''It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made.''

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, ''Guidance for Flammability Testing of Seat/Console Installations,'' October 17, 1997 (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large-surface-area panels must comply with heat-release and smoke-emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat-release and smoke-emission requirements. We have determined that special conditions would be issued to apply the standards defined in § 25.853(d) to seats with large, non-metallic panels in their design.

Applicability

As discussed above, these special conditions are applicable to Airbus Model A340 series airplanes. Although the heat-release and smoke-emission testing requirements of § 25.853, per Appendix F, parts IV and V, are not part of the part 25 certification basis for the Airbus Model A340 series airplanes, these special conditions are applicable if the airplanes are in 14 CFR part 121 service. Part 121 requires applicable interior panels to comply with § 25.853, Appendix F, parts IV and V, regardless of the certification basis. It is not our intent to require seats with large, non-metallic panels to meet § 25.853, Appendix F, parts IV and V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Airbus Model A340 series airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice-and-comment period in several prior instances, and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A340 series airplanes.

1. Compliance with 14 CFR part 25, appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may be either a single component or multiple components in a concentrated area in

their design. Traditional panels are exempted.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with No. 1. A triple-seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (*e.g.,* outboard seat place, 1 sq. ft.; middle, 1 sq. ft.; and inboard, 2.5 sq. ft.)

3. Seats need not meet the test requirements of 14 CFR part 25, appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have smoke-and-heat release in their certification basis, and do not need to comply with the requirements per 14 CFR 121.312,

c. Airplanes exempted from smoke-and-heat-release requirements.

4. The applicability requirements fall into two categories: either new-seat certification program or previously certified. New-seat certification programs must meet the special conditions, previously certified are not required to.

Issued in Renton, Washington on December 28, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31119 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM422; Special Conditions No. 25–398–SC]

Special Conditions: Airbus Model A318–112 Airplane (S/N 3886); Certification of a Cooktop

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: The FAA issues these special conditions for the Airbus Model A318–112. This airplane, as modified by Bizjet, a Lufthansa Technik Company, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. The modification consists of installing an electrically heated surface, called a cooktop. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 23, 2009.

We must receive your comments by February 18, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM422, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM422. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dan Jacquet, FAA, Airframe and Cabin Safety Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2676; facsimile (425) 227–1100; e-mail *daniel.jacquet@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment for these special conditions is impracticable because this procedure would significantly delay certification and delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. We therefore find that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested persons to take part in this rulemaking by sending written comments. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 5, 2008, Bizjet International (Bizjet) applied for a supplemental type certificate for the Airbus Model A318–112 airplane, serial number 3886. The Airbus Model A318–112 airplane is a large, transport-category airplane powered by two CFM56–5B9/P engines, with a basic maximum takeoff weight of 130,071 pounds. The modified Airbus Model A318–112 airplane, serial number 3886, operates with a two-pilot crew, up to four flight attendants, and can hold up to 19 passengers.

The modification consists of installing an electrically heated surface, called a cooktop. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger-cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Because existing airworthiness regulations do not contain safety standards addressing cooktops, we issue these special conditions.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Bizjet must show that the Airbus 318–112, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in A28NM are 14 CFR part 25, as amended by Amendments 25–1 through 25–56, with reversions to earlier amendments, voluntary compliance to later amendments, special conditions, equivalent-safety findings, and

exemptions listed in the type-certificate data sheet.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model A318–112 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model A318–112 must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

As noted earlier, the modification of the Airbus Model A318–112 airplane, serial number 3886, will incorporate a cooktop in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards. The applicant's proposed system is considered to be a novel or unusual design feature.

Discussion

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards presented by ovens are thus inherently limited, and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food. These may represent unprecedented hazards to both occupants and the airplane.

Cooktops could have serious implications for passenger and airplane safety if appropriate requirements are not established for their installation and use. These special conditions apply to cooktops with electrically powered burners. Use of an open flame is beyond the scope of these special conditions and would require separate rulemaking action. The requirements identified in these special conditions are in addition to those considerations identified in Advisory Circular (AC) 25–10, ''Guidance for Installation of Miscellaneous Non-required Electrical Equipment,'' and those in AC 25–17, ''Transport Airplane Cabin Interiors Crashworthiness Handbook.'' The intent of these special conditions is to provide a level of safety consistent with that on similar airplanes without cooktops.

Applicability

As discussed above, these special conditions are applicable to the Model A318–112 airplane, serial number 3886, modified by Bizjet. Should Bizjet apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A28NM, to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, because the certification date for the subject modification to the Model A318–112 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for the Airbus Model A318–112 airplane, serial number 3886, modified by Bizjet.

Cooktop installations with electrically powered burners must comply with the following criteria:

1. Means, such as conspicuous burner-on indicators, physical barriers, or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

2. Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents, e.g., soup, sauces, etc., from the effects of flight loads and turbulence. Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop. Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable. Placarding must be installed which prohibits the use of cookware that cannot be accommodated by the restraint system.

3. Placarding must be installed which prohibits the use of cooktops (i.e., power on any burner) during taxi, takeoff, and landing.

4. Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop. Two acceptable means of complying with this requirement are as follows:

a. Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended, which would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered; and a fire detector must be installed in the vicinity of the cooktop, and which provides an audible warning in the passenger cabin; and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. Access to the extinguisher must not be blocked by a fire on or around the cooktop. One of the fire extinguishers required by § 25.851 may be used to satisfy this requirement. If this is not possible, then the extinguisher in the galley area would be additional, or,

b. An automatic, thermally activated, fire-suppression system must be installed to extinguish a fire at the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved, total-flooding agent suitable for use in an occupied area. The fire-suppression system must have a manual override. The automatic activation of the fire-suppression system must also automatically shut off power to the cooktop.

5. The surfaces of the galley surrounding the cooktop, which would be exposed to a fire on the cooktop surface or in cookware on the cooktop, must be constructed of materials that comply with the flammability requirements of Part III of Appendix F of part 25. This requirement is in addition to the flammability

requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

6. The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils and be included in the instructions for continued airworthiness. The ventilation system ducting must be protected by a flame arrestor. [**Note:** The applicant may find additional useful information in the *Society of Automotive Engineers, Aerospace Recommended Practice* 85, Rev. E, article titled, ''Air Conditioning Systems for Subsonic Airplanes,'' August 1, 1991.]

7. Means must be provided to contain spilled foods or fluids in a manner that prevents the creation of a slipping hazard to occupants, and that will not lead to the loss of structural strength due to corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

10. A deployable cover must be readily available to cover the cooktop. The cooktop must be in stowed position during taxi, takeoff, and landing operation. When the cooktop is in the stowed position, the power must be automatically shut off.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31120 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM424; Special Conditions No. 25–400–SC]

Special Conditions: Airbus Model A330 Series Airplanes; Seats with Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A330 series airplanes. These airplanes will have a novel or unusual design feature(s) associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 28, 2009. We must receive your comments by February 18, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM424, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM424. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2785; facsimile (425) 227–2195; e-mail *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 15, 2009, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac, Cedex, France, applied for a design change to Type Certificate No. A46NM for installation of seats that include non-traditional, large, non-metallic panels in Airbus Model A330 series airplanes. These airplanes, currently approved under Type Certificate No. A46NM, are swept-wing, conventional-tail, twin-engine, turbofan- powered, twin-aisle, large-sized transport-category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. A46NM do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats

also met the then-recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat-release and smoke-emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage-bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14, Code of Federal Regulations (14 CFR), part 25, appendix F, parts IV and V, heat-release and smoke-emission requirements.

Type Certification Basis

Under the provisions of § 21.101, Airbus must show that the Model A330 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A46NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A46NM are as follows: 14 CFR part 25, as amended by Amendments 25–1 through 25–63, 25–65, 25–66, 25–68, 25–69, 25–73, 25–75, 25–77, 25–78, 25–81, 25–82, 25–84 and 25–85; certain regulations at Amendments 25–72 and 25–74; and Amendment 25–64 with exceptions. Refer to TCDS A46NM for a complete description of the certification basis for that model, including certain special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A330 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model A330 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Model A330 series airplanes will incorporate the following novel or unusual design features: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of occupants of the cabin in the case of fire. These seats are considered a novel design for transport-category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels. To provide a level of safety that is equivalent to that provided by the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions, required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

Definition of ''Non-Traditional, Large, Non-Metallic Panel''

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: Seat backs and bottoms, leg/foot rests, kick panels, back shells, credenzas, and associated furniture. Examples of traditional exempted parts of the seat include: Arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors, and shrouds.

Clarification of ''Exposed''

''Exposed'' is considered to include those panels directly exposed to the passenger cabin in the traditional sense, plus those panels enveloped such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials still must comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s, the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large-surface-area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire survival time. Materials that comply with the standards (i.e., § 25.853, entitled ''Compartment interiors,'' as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes over materials that do not comply.

At the time these standards were written, the FAA explored the potential application of the requirements of heat-release and smoke-emission requirements to seats. The seat frame itself was not a concern because it was primarily made of aluminum and only small amounts of non-metallic materials. It was determined that the overall effect on survivability was negligible, whether or not the food trays met the heat-release and smoke-emission requirements. The requirements, therefore, did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985), and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded ''because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats.''

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March

6, 1995) clarified the definition of minimum panel size: ''It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made.''

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, ''Guidance for Flammability Testing of Seat/Console Installations,'' October 17, 1997 (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large-surface-area panels must comply with heat-release and smoke-emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat-release and smoke-emission requirements. We have determined that special conditions would be issued to apply the standards defined in § 25.853(d) to seats with large, non-metallic panels in their design.

Applicability

As discussed above, these special conditions are applicable to Airbus Model A330 series airplanes. Although the heat-release and smoke-emission testing requirements of § 25.853, per Appendix F, parts IV and V, are not part of the part 25 certification basis for the Airbus Model A330 series airplanes, these special conditions are applicable if the airplanes are in 14 CFR part 121 service. Part 121 requires applicable interior panels to comply with § 25.853, Appendix F, parts IV and V, regardless of the certification basis. It is not our intent to require seats with large, non-metallic panels to meet § 25.853, Appendix F, parts IV and V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Airbus Model A330 series airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice-and-comment period in several prior instances, and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A330 series airplanes.

1. Compliance with 14 CFR part 25, appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may be either a single component or multiple components in a concentrated area in their design. Traditional panels are exempted.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with No. 1. A triple-seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (e.g., outboard seat place, 1 sq. ft.; middle, 1 sq. ft.; and inboard, 2.5 sq. ft.).

3. Seats need not meet the test requirements of 14 CFR part 25, appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have smoke-and-heat release in their certification basis, and do not need to comply with the requirements per 14 CFR 121.312,

c. Airplanes exempted from smoke-and-heat-release requirements.

4. The applicability requirements fall into two categories: either new-seat certification program or previously certified. New-seat certification programs must meet the special conditions, previously certified are not required to.

Issued in Renton, Washington, on December 28, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31118 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM421; Special Conditions No. 25–397–SC]

Special Conditions: Boeing Model 757 Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 757 series airplanes. These airplanes, as modified by Continental Airlines, Inc., will have a novel or unusual design feature associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 18, 2009. We must receive your comments by February 18, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM421, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM421. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: John Shelden, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2785; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Seats With Non-Traditional, Large, Non-Metallic Panels

The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus return to service of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards across the range of airplane makes and models will ensure consistent ruling for the aviation industry.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On, April 9, 2009, Continental Airlines, Inc., 600 Jefferson St. HQJEG 13th Floor, Houston, TX 77002, applied for a supplemental type certificate for installing seats that include non-traditional, large, non-metallic panels in a Boeing Model 757 series airplane. The Boeing Model 757 series airplanes, currently approved under Type Certificate No. A2NM, are swept-wing, conventional-tail, twin-engine, turbofan-powered, single-aisle, medium-sized, transport-category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. A2NM do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then-recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, their contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat-release and smoke-emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead-stowage-bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14, Code of Federal Regulations (14 CFR), part 25, appendix F, parts IV and V, heat-release and smoke-emission requirements.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Continental Airlines, Inc., must show that the Boeing Model 757 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A2NM are as follows:

- For Model 757–200 airplanes: part 25, as amended by Amendment 25–1 through Amendment 25–45. In addition, an equivalent safety finding exists with respect to § 25.853(c), Compartment interiors.
- For Model 757–300 airplanes: part 25, as amended by Amendment 25–1 through Amendment 25–85, with the exception of § 25.853(d)(3), Compartment interiors, at Amendment 25–72.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25) do not contain adequate or appropriate safety standards for the Boeing Model 757 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 757 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19 and 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design

feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Boeing Model 757 series airplanes will incorporate the following novel or unusual design feature: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels in their designs. To provide a level of safety that is equivalent to that afforded to the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions, required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas, and associated furniture. Examples of traditional exempted parts of the seat include: arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors, and shrouds.

Clarification of ''Exposed''

''Exposed'' is considered to include panels that are directly exposed to the passenger cabin in the traditional sense, and panels that are enveloped, such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s, the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large surface-area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire-survival time. Materials that comply with the standards (i.e., § 25.853, titled ''Compartment interiors,'' as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes over materials that do not comply.

At the time these standards were written, the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and included only small amounts of non-metallic materials. We determined that the overall effect of these materials on survivability was negligible, whether or not the food trays met the heat-release and smoke-emission requirements. The requirements therefore did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985), and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded ''because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats.''

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: ''It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made.''

On October 17, 1997, the FAA issued Policy Memorandum 97–112–39, *Guidance for Flammability Testing of Seat/Console Installations,* (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include non-traditional, large, non-metallic panels with surface areas that would impact survivability during a cabin-fire event, comparable to partitions or galleys. The memo noted that large-surface-area panels must comply with heat-release and smoke-emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin-fire event.

In October, 2004, we focused attention on the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional fabric-covered metal. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat-release and smoke-emissions requirements. We have determined that special conditions would be issued to apply the standards defined in § 25.853(d) to seats designed with non-traditional, large, non-metallic panels.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 757 series airplanes. It is not our intent, however, to require seats with non-traditional, large, non-metallic panels to meet § 25.853, which calls out appendix F, parts IV and V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Because the heat-release and smoke-emission testing requirements of § 25.853 per appendix F, parts IV and V, are not part of the type-certification basis of the Model 757, these special conditions are only applicable if the Model 757 series airplanes are in 14 CFR part 121 operations. Section 121.312 requires compliance with the heat-release and smoke-emission testing requirements of § 25.853, for certain airplanes, irrespective of the type-certification bases of those airplanes. For Model 757 series airplanes, these are the airplanes that would be affected by these special conditions. Should Continental Airlines, Inc., apply at a later date for a supplemental type

certificate to modify any other model included on Type Certificate No. A2NM, to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model-series of airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the return-to-service date for the Boeing Model 757 series airplane, modified by Continental Airlines, Inc., is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Boeing Model 757 series airplanes modified by Continental Airlines, Inc.

1. Except as provided in paragraph 3 of these special conditions, compliance with 14 CFR part 25, appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition (1), above. A triple-seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (e.g., outboard-seat place 1 square foot; middle, 1 square foot; and inboard, 2.5 square feet).

3. Seats do not have to meet the test requirements of 14 CFR part 25, appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or fewer,

b. Airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and do not need to comply with the requirements of 14 CFR 121.312, and

c. Airplanes exempted from § 25.853, Amendment 25–61 or later.

Issued in Renton, Washington, on December 18, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31121 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Establishment of Class E Airspace; Spencer, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the Federal Register that establishes Class E Airspace at Spencer, WV. This action enhances the safety and airspace management of Boggs Field Airport, Spencer, WV.

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

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

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published a direct final rule with request for comments establishing Class E Airspace at Boggs Field Airport, Spencer, WV, in the **Federal Register** on October 19, 2009 (74 FR 53407), Docket No. FAA–2009–0602; Airspace Docket No. 09–AEA–13. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 17, 2009. No adverse comments were received, and thus this notice confirms that effective date.

* * * * *

Issued in College Park, Georgia, on December 15, 2009.

Barry A. Knight,

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

[FR Doc. E9–30801 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0203; Airspace Docket No. 09–ASO–12]

Modification of Class D and E Airspace; Albemarle, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date; correction.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** May 6, 2009, that modifies Class D and Class E airspace at Stanly County Airport, Albemarle, NC. This action also corrects the True bearing used in the Class D airspace description that was stated incorrectly.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

The rule modifying Class D and E airspace for Stanly County Airport, Albemarle, NC, published in the **Federal Register** May 6, 2009 (74 FR

20869), became effective August 27, 2009. Subsequent to the effective date of the rule, the FAA found that the True bearing in the Class D description for Stanly County Airport was stated incorrectly. This action corrects that error.

Correction

Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for FR Doc. E9–10397, FAA Airspace Docket No. 09–ASO–12, as published in the **Federal Register** May 6, 2009 (74 FR 20869), is corrected as follows:

On page 20870, column two, line 38, amend the language to read

71.1 [Amended]

* * * * *

''* * * 037° bearing from Stanly County Airport to 7.8 miles northeast.''

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments modifying Class D and E airspace, Albemarle, NC in the **Federal Register** on May 6, 2009 (74 FR 20869), Docket No. FAA–2009–0203; Airspace Docket No. 09–ASO–12. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 27, 2009. No adverse comments were received, and thus this notice confirms that effective date.

* * * * *

Issued in College Park, Georgia, on December 9, 2009.

Barry A. Knight,

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

[FR Doc. E9–30286 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Modification of Class E Airspace; Beckley, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** that modifies Class E airspace at Raleigh County Memorial Airport, Beckley, WV. This rule increases the safety and management of the aircraft operations at Raleigh County Memorial Airport.

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

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

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published a direct final rule with request for comments modifying Class E Airspace at Raleigh County Memorial Airport, Beckley, WV, in the **Federal Register** on October 19, 2009 (74 FR 53408), Docket No. FAA–2009–0651; Airspace Docket No. 09–AEA–15). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 17, 2009. No adverse comments were received, and thus this notice confirms that effective date.

* * * * *

Issued in College Park, Georgia, on December 15, 2009.

Barry A. Knight,

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

[FR Doc. E9–30800 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0652; Airspace Docket 09–ASO–21]

Modification of Class E Airspace; Sarasota, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** that modifies the Class E airspace at Sarasota/Bradenton International Airport, Sarasota, FL. This rule increases the safety and management of the aircraft operations at Sarasota/Bradenton International Airport.

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

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

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published a direct final rule with request for comments modifying Class E Airspace at Sarasota/Bradenton International Airport, Sarasota, FL, in the **Federal Register** on September 14, 2009 (74 FR 46898), Docket No. FAA–2009–0652; Airspace Docket 09–ASO–21. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received

within the comment period, the regulation would become effective on December 17, 2009. No adverse comments were received, and thus this notice confirms that effective date.

* * * * *

Issued in College Park, Georgia, on December 17, 2009.

Barry A. Knight,

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

[FR Doc. E9–30855 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 90

[Docket Number 0908171239–91412–02]

RIN 0607–AA49

Temporary Suspension of the Population Estimates and Income Estimates Challenge Programs

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) publishes this final rule to announce to state and local governments and to federal agencies that, beginning on February 3, 2010, the Census Bureau will temporarily suspend the Population Estimates Challenge Program during both the decennial census year and the following year, and will indefinitely suspend the Per Capita Income Estimates Challenge Program (also known as Procedure for Challenging Certain Population and Income Estimates) to accommodate the taking of the 2010 Census. During this time, the Census Bureau will not provide the operations necessary to review the July 1, 2009, population or per capita income estimates for state, and other general-purpose governments, such as cities, towns, and villages. The Population Estimates Challenge Program will resume in 2012 as the program begins operations based upon the results of the 2010 Census. The Per Capita Income Estimates Challenge Program will be suspended until a rulemaking is initiated to remove those regulations from the Code of Federal Regulations. This rule also summarizes the comments received on the October 7, 2009 proposed rule requesting comments on the proposed temporary suspension of the Population Estimates and Income Estimates Challenge Programs.

DATES: This rule is effective on February 3, 2010.

ADDRESSES: Correspondence concerning this final rule may be submitted to Dr. Enrique Lamas, Chief of the Population Division, through any of the following methods:

- *Fax:* Correspondence may be faxed to: (301) 763–2516.
- *E–Mail:* Correspondence may be e-mailed to: *Enrique.Lamas@census.gov.*
- *Mail:* Correspondence may be mailed to: Dr. Enrique Lamas, Chief, Population Division, U.S. Census Bureau, H.Q. 5H174, 4600 Silver Hill Road, Washington, DC 20233.

Electronic availability: This final rule is available on the Internet from the Census Bureau's Web site at *http://www.census.gov/popest/archives/challenges.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Rodger Johnson, Chief, Local Government Estimates and Migration Processing Branch, Population Division, Bureau of the Census, Washington, DC 20233, telephone (301) 763–2461, e-mail at *rodger.v.johnson@census.gov.*

SUPPLEMENTARY INFORMATION: The Census Bureau first adopted procedures for initiating informal challenges to certain population or per capita income estimates prepared by the Census Bureau in 1979 by amending Title 15 of the Code of Federal Regulations (CFR) to provide for a new Part 90 (44 FR 20646). These regulations were needed to standardize and codify procedures, and to extend to the state or local government the right to a hearing prior to a final determination of the challenged estimate by the Director of the Census Bureau. Legal authority for the challenge procedures remains 13 U.S.C. 4, which provides in pertinent part, that the Secretary may issue rules and regulations, as he deems necessary to carry out his functions and duties under Title 13.

The Census Bureau prepares estimates of total population and per capita income for states and units of local government for the period between decennial censuses. States, counties, and other units of general-purpose government may initiate informal challenges to population and per capita income estimates under the procedures set forth in 15 CFR Part 90. Under the regulations, a challenge is defined as ''the process of objecting to or calling into question the Census Bureau's population or per capita income estimates of a state or unit of local government by that state or unit of local government.'' Government entities are given 180 days after the release of the population or per capita income estimates to initiate an informal challenge. If the challenge cannot be resolved informally, the government submitting the challenge can choose to file a formal challenge (15 CFR 90.9), which is resolved in a hearing that is held at the Census Bureau Headquarters, and presided over by a hearing officer that is appointed by the Census Bureau Director.

Summary of Comments and Responses

On October 7, 2009, the Census Bureau published a proposed rule in the **Federal Register** (74 FR 51526) requesting comments on the proposed temporary suspension of the Population Estimates and Income Estimates Challenge Programs. Five sets of comments were received during the comment period. A summary of the public comments and the response of the Census Bureau are provided below:

Commenter 1. The commenter suggested that the Census Bureau produce accurate estimates initially and not allow any challenges to the population estimates. The commenter also suggested that the challenge program is an expensive and unnecessary program.

Response 1. The Census Bureau did not accept this suggestion. The challenge program is an essential and historical part of the estimates program, and it enables eligible general-purpose governmental units to comment upon population estimates of concern, and to provide alternative or supplemental data to the Census Bureau to evaluate for use in revising the original estimate. The Census Bureau will continue to work with state, county, and local governments to efficiently administer a program that focuses on improving the accuracy of the estimates.

Commenter 2. The commenter wrote in support of the temporary suspension, deeming that it would be both confusing and pointless for the Census Bureau to administer a challenge process where the challenge decisions and responses would overlap with the first release of Census 2010 population counts to the President and Congress.

Response 2. The Census Bureau acknowledges the comment and concurs.

Commenter 3. The commenter had a number of questions or comments regarding the notice. The commenter wanted to know if it was a normal practice to suspend the population estimates challenge during decennial years, if the suspension covered the informal and formal phases of the process, if it was a cost-effective use of resources, and if there might be localities concerned about suspension of

the program. The commenter also was interested in future plans to revise the procedures following the 2010 Census.

Response 3. This instance is the first time that the Census Bureau has temporarily suspended the Population Estimates and the Per Capita Income Estimates Challenge Programs. Suspending the challenge programs is consistent with the practice applied to two other post-census population programs. Specifically, the Census Bureau has suspended the Special Census and the Geographically Updated Population Certification Program for the duration of the decennial census activities and resumed these programs afterwards. The suspension will apply to the entire scope of the program, including both informal and formal challenge procedures. The suspension is an appropriate cost-effective means to ensure the allocation of sufficient resources for the demographic analysis of the 2010 Census. In addition, the suspension will allow the Census Bureau to better integrate the data from the 2010 Census into the estimates program. Suspension of the program also reduces the risk of confusion resulting from the close timing between the release of the 2010 Census counts and the release of revised estimates as part of administering challenges to the 2009 estimates. During the comment period the Census Bureau received no responses from eligible governmental units that opposed this proposal. In response to concerns about the redesign of the challenge program after the 2010 Census, the Census Bureau will await the assessment of the 2010 Census compared to the estimates. In proposing any redesign of the challenge program, the Census Bureau will strive to capture the most accurate demographic components that are consistent with the estimates program methodologies, and reduce the need for a post-estimates review process.

Commenter 4. The commenter voiced support for the Census Bureau decision to temporarily suspend the Population Estimates Challenge Program and to resume it for the 2011 estimates. The commenter also supported the Census Bureau's stated intent to evaluate the results of the 2010 Census in comparison to the population estimates, conduct research to enhance the estimates and challenge programs, and to integrate the updates from the 2010 Census into the estimates program. The commenter also strongly recommended that the Census Bureau gather perspectives from a wide variety of stakeholders reliant on population estimates. The commenter also concurred with the Census Bureau intent to indefinitely suspend the income estimates challenge program until a rulemaking can be initiated to remove the regulations from the Code of Federal Regulations.

Response 4. The Census Bureau concurs with the comments and suggestion of this commenter. We agree that little disruption will occur with the suspension of the program, due to the proximate release of the 2010 Census counts to all stakeholders in early 2011. In considering any revisions to the challenge program, the Census Bureau will, in a reasonable period and through appropriate venues, consult a variety of stakeholders on the elements of the program. Any proposal to revise the program will allow for a comment period to ensure that the needs of the user community are included before any revisions are implemented.

Commenter 5. The commenter stated that the public should be able to challenge any estimate by opening the process to groups or individuals.

Response 5. The Census Bureau did not accept this suggestion. Opening the challenge program to groups or individuals that do not officially represent states, counties, or local governments would increase the administrative and evaluative complexity of this program for the Census Bureau. The potential for multiple, inconsistent challenges from individuals or other groups would result in an inefficient use of limited resources. States, counties, and local governments have a vested interest in securing the most accurate population estimates possible, and would have the best information and resources to challenge the population estimate. Thus, we have determined to retain the current requirements of the challenge program codified in Title 15, Part 90 of the CFR, which allow only eligible general-purpose governmental units to submit population estimates challenges.

Suspension of the Population Estimates and Per Capita Income Estimates Challenge Program

As is done for other intercensal programs, the Census Bureau hereby notifies the public that it will suspend the Population Estimates Challenge Program after the resolution of all challenges to the 2008 population estimates, which should occur by February 3, 2010. The Census Bureau will release the 2009 population estimates in 2010 and the Census Bureau will not accept challenges to the 2009 estimates.

The Population Estimates Challenge Program will resume in 2012 for the 2011 estimates after the Census Bureau concludes its responsibilities in the conduct of the decennial census. During the period when the program is suspended, the Census Bureau will be conducting demographic analysis of the 2010 Census, evaluating the results of the 2010 Census in comparison with the population estimates, conducting research to enhance the estimates and challenge programs and integrating the updates from the 2010 Census into the estimates program after the 2010 Census.

After the conduct of the decennial census, the Census Bureau will resume accepting challenges to the population estimates by publishing a notice in the **Federal Register** that will announce the date when it will begin to accept challenges. The Census Bureau will accept challenges beginning with the 2011 population estimates. The 2011 population estimates are based upon the 2010 Census and are scheduled for release in 2012.

Suspending the Population Estimates Challenge Program is a necessary action to ensure that sufficient resources are allocated to the conduct of the decennial census and to allow the Census Bureau's Population Division staff to effectively evaluate the 2010 Census results.

In addition, the Census Bureau notifies the public that it also will suspend the Per Capita Income Estimates Challenge Program, which are codified in the same part as the Population Estimates Challenge Program. This program has not been active since the general revenue sharing program ended in 1986, along with its requirement for per capita income estimates, and thus the Census Bureau has determined to suspend the program indefinitely. The Census Bureau will undertake a rulemaking action in the near future to remove these regulations from the CFR.

Classification

Executive Order (EO) 12866: It has been determined that this notice is not significant for purposes of EO 12866.

Executive Order 13132: It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

Regulatory Flexibility Act: The Chief Counsel for Regulations certified to the Chief Counsel for Advocacy that this rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic

impact of this final rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 90

Administrative practice and procedure; Census data; State and local governments.

■ For reasons discussed in the preamble, the Census Bureau is amending 15 CFR Part 90 as follows:

PART 90—PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES

■ 1. The authority citation for Part 90 continues to read as follows:

Authority: 13 U.S.C. 4.

■ 2. Effective February 3, 2010, PART 90—PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES is stayed indefinitely.

Dated: December 22, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9–31171 Filed 12–31–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. FHWA–2009–0029]

RIN 2125–AF31

Discontinuance of Form FHWA–47

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule eliminates regulations which require contractors on National Highway System (NHS) projects of $1 million or more to submit Form FHWA–47. Since the FHWA no longer uses this information, the FHWA is eliminating this reporting requirement.

DATES: This rule is effective February 3, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Wright, Office of Program Administration, (202) 366–4630; or Mr. Michael Harkins, Office of the Chief Counsel (202) 366–4928, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may retrieve a copy of the notice of proposed rulemaking (NPRM), comments submitted to the docket, and a copy of this final rule online through the Federal Rulemaking portal at: *http://www.regulations.gov*. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document also may be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

During a 2003 Government Accountability Office (GAO) review of the States' highway construction costs, the GAO reviewed the FHWA's bid price data collection requirements. In a November 2003 report, GAO made recommendations to FHWA to review the usefulness and accuracy and/or under reporting of the bid price data collected.[1] In response to GAO's review the FHWA Office of Infrastructure, Office of Program Administration, in collaboration with the Office of Transportation Policy Studies, hired a consultant to review the need, quality, and value of the current data collections system in partnership with the American Association of State Highway and Transportation Officials. This review also included data collected for material and labor prices and bid tabulation. As a result, FHWA has decided to discontinue the reporting requirements for the Form FHWA–45, Bid Price Data; Form FHWA–47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds; and Form FHWA–810, Bid Tabulation Data. This decision is documented in a May 22, 2007, policy memorandum (see *http://www.fhwa.dot.gov/federalaid/052207.cfm*) as well as in a change to the Federal-Aid Policy Guide through Transmittal 38, dated July 3, 2007 (see *http://www.fhwa.dot.gov/legsregs/directives/fapg/1trans38.htm*).

Form FHWA–45, Bid Price Data, was collected on NHS projects over $500,000. Form FHWA–45 served as a means to compute the highway construction bid price index, which is published in the document ''Price Trends for Federal-aid Highway Construction.''[2] The data were used in our ''Highway Statistics''[3] publication and by other outside sources. With the discontinuance of the Form FHWA–45, the future of FHWA's construction price trends reporting has been temporarily suspended. Currently, the FHWA has a contract for the development of a new highway construction cost indexing system, which will involve the use of the Oman System Bid Tabs data. This system utilizes construction price data extracted directly from State DOT data bases. Targeted completion for the new system is early in calendar year 2010.

Form FHWA–810, Bid Tabulation Data, was collected on all NHS projects. The data from the Form FHWA–810 have been used to compute national summaries on the largest contract awards and contract size statistics. The data were also used to produce State-by-State summaries on contracts awards, number of bids, and average number of bids.

Section 635.126 of title 23, Code of Federal Regulations, requires Form FHWA–47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds, which is the subject of this final rule, to be collected on all NHS projects over $1,000,000. Form FHWA–47 served as a means to collect data related to the quantities of materials, supplies, and labor used for various types of highway construction. The data reported on this form were used primarily to compute usage factors for these various materials, supplies, and labor. These factors were used to determine the economic impacts of cuts or increases in the cost of Federal-aid highway construction.

On June 23, 2009, FHWA published in the **Federal Register** at 74 FR 29634 a NPRM proposing to delete section 635.126 of title 23, Code of Federal Regulations, since the FHWA no longer intends to use the information submitted through Form FHWA–47. The FHWA received one comment to the docket from a member of the public in response to the NPRM. This commenter was against the discontinuance of Form FHWA–47 because the commenter believes it would hold contractors accountable for their work, the timeline of their work, the products and materials that go into their work for safety reasons, and the cost of their work. The FHWA disagrees. While FHWA does not disagree that all contractors should be held accountable

[1] See GAO–04–113R. (*http://www.gao.gov/new.items/d04113r.pdf*)

[2] See Price Trends for Federal-aid Highway Construction (*http://www.fhwa.dot.gov/programadmin/pricetrends.cfm*).

[3] See Highway Statistics (*http://www.fhwa.dot.gov/policy/ohpi/hss/hsspubs.cfm*).

for their work, the purpose of the FHWA–47 was not to serve as a tool to reinforce accountability. Its purpose, as noted in the earlier background paragraph, was to provide information on material usage factors for all projects on the NHS that were $1 million or more. This information was used by vendors, private sector engineers, state DOTs, etc., for estimators to determine various trends for construction. However, the rate of submitting the forms declined over the years and thus rendered the data inaccurate. As noted above, Form FHWA–47 has not been collected by the FHWA since 2007, and the FHWA believes there is little utility in such a data collection activity. As such, this final rule adopts the NPRM without change.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. The enacted change is not anticipated to adversely affect, in any material way, any sector of the economy. The FHWA expects that the enacted change will alleviate confusion and provide policy consistency and clarity at little or no additional expense to public agencies or the motoring public. In addition, the enacted change would not create a serious inconsistency with another agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this change on small entities and has determined that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). This proposed action would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any 1 year (2 U.S.C. 1532) period to comply with these changes.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

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 do apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Form FHWA–47 was previously approved under OMB Control Number 2125–0033 in July 1998, and was associated with 5 burden hours. We allowed this control number to expire because we no longer needed the information. Since this action eliminates a current reporting requirement and does not require any entity to write or submit new reports, the FHWA request for approval from OMB under the provisions of the PRA is not required.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this action would effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 635

Contract procedures, Force account construction, Physical construction authorization, General material requirements.

Issued on: December 21, 2009.

Victor M. Mendez,

Administrator.

■ In consideration of the foregoing, the FHWA amends chapter I of title 23, Code of Federal Regulations, as set forth below:

PART 635–CONSTRUCTION AND MAINTENANCE

■ 1. The authority citation of part 635 continues to read as follows:

Authority: Sec. 1503 of Public Law 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.;* Sec. 1041(a), Public Law 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

§ 635.126 [Removed and Reserved]

■ 2. Remove and reserve § 635.126.

[FR Doc. E9–31106 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9478]

RIN 1545–BI86

Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide rules relating to the disclosure and use of tax return information by tax return preparers. These regulations provide updated guidance affecting tax return preparers regarding the use of information related to lists for solicitation of tax return business; the disclosure or use of statistical compilations of data under section 7216 of the Internal Revenue Code (Code) by a tax return preparer in connection with, or in support of, a tax return preparer's tax return preparation business, including identification of additional limited circumstances when a tax return preparer who compiles statistical information may disclose the compilation without taxpayer consent, and the placement of additional restrictions on the content of the compilation that may be disclosed under those circumstances without taxpayer consent; and the disclosure or use of information for the purpose of performing conflict reviews. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on January 4, 2010.

Applicability Date: For date of applicability, see § 301.7216–2T(s).

FOR FURTHER INFORMATION CONTACT: Molly K. Donnelly, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 301 to provide modified rules relating to the ability of a tax return preparer to use tax return information for the purposes of compiling, maintaining and using lists for solicitation of tax return business under § 301.7216–2(n), disclose and use statistical compilations of data described in § 301.7216–1(b)(3)(i)(B) under § 301.7216–2(o), and disclose and use tax return information for the purpose of performing conflict reviews under § 301.7216–2(p), without taxpayer consent. These three paragraphs are being modified to expand the ability of tax return preparers to disclose or use certain limited tax return information under specific and limited circumstances in a manner that is expected to benefit taxpayers, tax return preparers, and the general public, as more fully described in the Explanation of Provisions section of this preamble. One set of these modifications, those to § 301.7216–2(o), are being made following the issuance of Notice 2009–13 and the receipt of comments submitted in response to that Notice, while the modifications to the other two paragraphs are being made as a result of the Treasury Department's and the IRS's efforts to regularly review the effect of the recently issued final regulations on taxpayers and tax return preparers. In the accompanying and cross-referenced notice of proposed rulemaking, the Treasury Department and the IRS request comments on the proposed rules from all interested parties.

On January 7, 2008, the Treasury Department and the IRS issued final regulations under section 7216 (TD 9375) (73 FR 1058) applicable to disclosures or uses of tax return information occurring on or after January 1, 2009. The final regulations replaced previously issued final regulations that remained applicable to disclosures or uses of tax return information occurring prior to January 1, 2009. The final regulations included § 301.7216–1(b)(3)(i)(B) which, for disclosures and uses of tax return information occurring on or after January 1, 2009, provides that tax return information includes statistical compilations of tax return information. The final regulations included § 301.7216–2(n), which provides that tax return preparers may use, without taxpayer consent, certain limited taxpayer contact information constituting tax return information for the purposes of compiling, maintaining, and using lists for the solicitation of tax return business, incorporating its predecessor, § 301.7216–2(m), but providing a minor expansion of the contact information allowed to be used. The final regulations included the addition of new § 301.7216–2(o), which describes the limited circumstances when a tax return preparer may use tax return information to produce statistical compilations, and when the preparer may use or disclose the produced statistical compilation without written consent. The final regulations included § 301.7216–2(p), which provides that tax return preparers may disclose and use tax return information without taxpayer consent in the performance of quality or peer reviews, incorporating its predecessor, § 301.7216–2(o), with only minor, non-technical adjustments.

The Treasury Department and the IRS subsequently issued Notice 2009–13 (2009–6 IRB 447 (February 9, 2009)) (see § 601(d)(2)(ii)(*b*)), to provide interim guidance relating to the ability of a tax return preparer to disclose and use statistical compilations of anonymous tax return information in support of a tax return preparer's tax return preparation business. The Notice provides guidance on the tax return information a tax return preparer may use to compile anonymous statistical information, and on the circumstances when the tax return preparer may disclose the anonymous statistical information without taxpayer consent. Notice 2009–13 sets forth rules to be applied by the Treasury Department and the IRS during 2009 while they consider whether the interim guidance should be adopted by regulations or further modified, taking into account public comments submitted in response to the Notice.

Written comments were received in response to the Notice. All comments were considered and are available for public inspection upon request. This preamble summarizes the responsive comments received by the Treasury Department and the IRS.

These temporary regulations modify the rules under §§ 301.7216–2(n), 301.7216–2(o), and 301.7216–2(p), and supersede the interim guidance provided by Notice 2009–13.

Summary of Comments in Response to Notice 2009–13

1. Purpose and Use

One commentator recommended that the regulations specifically provide that all tax preparation firms may use tax return information to connect taxpayers to free government programs and services, provided they have obtained the consent of their clients. This comment was not adopted. Under the regulations in force, this use would be permitted because the tax return preparer obtained the consent of its clients. Consents must conform to the requirements of § 301.7216–3 of the regulations and any other guidance issued pursuant to § 301.7216–3.

2. Disclosure Requirements

Several commentators recommended that the prohibition on disclosing cells containing data from fewer than 25 tax returns be eliminated as long as the data is anonymous and free of all taxpayer-identifying information. Some commentators recommended that return preparers be able to disclose, without consent, all aggregate data that is stripped of personal identifying information, noting that volunteer tax preparation programs utilize aggregate data to demonstrate and track the tax preparation and financial service needs of their clients. Additional commentators recommended that the 25 tax return threshold be modified to allow for the disclosure of cells containing data from ten or more tax returns. These commentators indicated that removal of all taxpayer-identifying information provides sufficient taxpayer protection and implied that it may not be feasible for tax return preparers who operate small tax return preparation businesses to always produce a statistical compilation that meets the 25 tax return threshold. These recommendations were adopted in part, and the temporary regulations now permit the disclosure of cells containing data from ten or more tax returns.

3. Research and Public Policy Discussions

One commentator recommended that, for purposes of the guidance, the term ''tax return preparation business'' should include ''bona fide research or public policy discussions (i) concerning state or federal taxation or (ii) utilizing data acquired during the tax return preparation process.'' The commentator was concerned that the interim guidance would inhibit tax return preparers from cooperating with scholars or sharing anonymous data with bona fide academic researchers studying consumer financial behavior because this topic arguably might not be viewed as supporting a tax return preparation business. This comment was considered and the temporary regulations now clarify that a tax return preparer is allowed to disclose an anonymous statistical compilation for bona fide research or public policy discussions concerning state or federal taxation or requiring data acquired during the tax return preparation process.

One commentator stated that government agencies' presentation of aggregated refund data and other statistical compilations in press releases, public presentations, reports, Web sites, or other electronic communications should automatically fall within the meaning of bona fide research and public policy discussions. This recommendation was not adopted because it would not be appropriate in this context to create particularized rules for government agencies, and inclusion of this specific circumstance in the exception might require the creation of an exhaustive list of the circumstances that would be considered bona fide research or public policy discussions. Instead, tax return preparers must determine on a case-by-case basis whether a disclosure is in support of bona fide research or public policy discussions.

4. Sale of a Statistical Compilation

One commentator recommended that the regulations should allow for the disclosure of a statistical compilation in conjunction with the sale or disposition of a tax return preparation business only when the entire tax return preparation business is being sold or disposed. This recommendation was not adopted because circumstances can exist when a tax return preparer may in good faith sell or dispose of less than the preparer's entire tax return preparation business.

Explanation of Provisions

1. § 301.7216–2(n)

The Treasury Department and the IRS are amending the regulations under section 7216 to provide a limited expansion of the information tax return preparers may, without taxpayer consent, use and include in lists for solicitation of tax return business pursuant to § 301.7216–2(n). The regulations also clarify that lists for solicitation of tax return business may not be used to solicit non-tax return preparation services. Finally, the regulations clarify the meanings of the phrases ''tax information'' and ''in conjunction with the sale or other disposition of the compiler's tax return business'' for purposes of the exception provided by § 301.7216–2(n).

The current regulations allow a tax return preparer to compile and maintain a list for solicitation of tax return business consisting solely of the names, addresses, e-mail addresses, and phone numbers of taxpayers whose tax returns the preparer has prepared or processed. The current regulations allow a tax return preparer to use this list to contact the taxpayers on the list to offer ''tax information or additional tax return preparation services to such taxpayers,'' and limit the transfer of the list to transfers occurring ''in conjunction with the sale or other disposition of the compiler's tax return preparation business.'' Section 301.7216–2(n) in its current form is identical to its form in prior versions of the regulations, with the exception that an additional type of information, e-mail addresses, was added to the short list of information allowed to be included in § 301.7216–2(n) lists.

Upon further consideration, the Treasury Department and the IRS conclude that § 301.7216–2(n) should be amended, in the form of temporary regulations, to provide additional flexibility to tax return preparers and benefits to taxpayers without compromising the rights of taxpayers to control the use or disclosure of their tax return information. These regulations expand the information that may be compiled and maintained in a list for solicitation of tax return business to include the taxpayer entity classification or type, including individual status, and taxpayer income tax return form number (for example, Form 1040, ''U.S. Individual Income Tax Return'', or Form 1120, ''U.S. Corporation Income Tax Return''). Determining the information that may be used to provide targeted newsletters and marketing under § 301.7216–2(n) requires balancing the benefits from taxpayers receiving the tax information most relevant to them against the ability of taxpayers to control the use of their tax return information. The Treasury Department and the IRS conclude that the current amendments made to § 301.7216–2(n) strike the proper current balance between these competing interests, but also recognize that future information and needs may require permitting additional information to be included in the list maintained under § 301.7216–2(n). Accordingly, the regulations are amended to allow the IRS to identify additional information that may be included in the list by issuing guidance

to be published in the Internal Revenue Bulletin.

These regulations clarify the phrase ''tax information'' by replacing that phrase with the phrase ''tax information and general business or economic information or analysis for educational purposes.'' It is contemplated that tax information includes explanations of current developments in tax law. The regulations also clarify that a list for solicitation of tax return business may not be used to solicit non-tax return preparation services.

The additions to the tax return information allowed to be compiled and maintained in § 301.7216–2(n) lists, along with the clarification of the phrase ''tax information,'' will provide additional flexibility to tax return preparers permitting them to more efficiently and effectively furnish relevant tax information and lawful solicitations to their taxpayer clients, and will benefit taxpayers by helping ensure that the taxpayers receive only information that may be useful to them and that specifically addresses tax issues relevant to them, thus improving taxpayer education and awareness and reducing the amount of needless information being received by taxpayers. By expressly prohibiting the use of these lists to solicit non-tax return preparation services, the regulation makes clear that the exception provided by § 301.7216–2(n) is limited to solicitations of tax return preparation services only. The phrase ''in conjunction with the sale or other disposition of the compiler's tax return preparation business'' is clarified to include due diligence performed in contemplation of a sale or other disposition of a tax return preparation business. The regulations also clarify that tax return information made available to a potential purchaser for due diligence purposes constitutes a disclosure of that information and not a transfer of that information.

The Treasury Department and the IRS have also amended the regulations to clarify that a person who is a tax return preparer solely because he provides auxiliary services to another tax return preparer may not use the tax return information he receives from such other tax return preparer to compile and maintain for his own use a list of taxpayers under § 301.7216–2(n). For example, a software company could in some cases market tax return preparation software to taxpayers directly and to tax return preparers. In connection with auxiliary services provided to tax return preparers, the software provider may receive information regarding the taxpayer clients of the tax return preparers. In such circumstances, the software provider could not use the tax return information it received from tax return preparers in the performance of auxiliary services to compile a list under § 301.7216–2(n) to market its software directly to the clients of the tax return preparers.

In light of these considerations, the Treasury Department and the IRS, pursuant to these regulations, amend § 301.7216–2(n) of the final regulations published on January 7, 2008, as described in this preamble.

2. § 301.7216–2(o)

The Treasury Department and the IRS are amending the regulations under section 7216 to provide additional exceptions to the general rule that a tax return preparer may not disclose or use statistical compilations of tax return information without taxpayer consent. Section 301.7216–2(o) currently prohibits the disclosure of statistical compilations unless the disclosure is made in order to comply with financial accounting or regulatory reporting requirements or occurs in conjunction with the sale or other disposition of the compiler's tax return preparation business; therefore, under the current regulations, tax return preparers may not disclose statistical compilations for other purposes that may provide benefits to taxpayers generally or to the public as a whole.

Responding to public comments received in response to Notice 2009–13, the Treasury Department and the IRS conclude that § 301.7216–2(o) should be amended, in the form of temporary regulations, to allow a tax return preparer to disclose statistical compilations of tax return information without taxpayer consent for additional limited purposes, with certain additional requirements.

While taxpayer consent regarding disclosure or use is a primary focus of the section 7216 regulations, the flexibility resulting from these temporary regulations will enable tax return preparers to disclose anonymous data for limited purposes that may provide benefit to both taxpayers in general and the public at large. Anonymous statistical data disclosed within the constraints provided by these temporary regulations can be used by tax return preparers for marketing purposes and to assist taxpayers in making informed choices about tax return preparers. The availability of anonymous statistical data can be useful from a public policy perspective, as the use and availability of such data can assist lawmakers, academics, non-profits, and other agencies in the facilitation of sound tax policy analysis and decisions. In addition, volunteer tax return preparers who provide free tax return preparation services to low- and moderate-income taxpayers and families would be able to demonstrate the impact of their efforts in order to obtain and administer funding necessary for their continued operation.

One concern that has been expressed regarding the disclosure of statistical compilations of tax return information by tax return preparers is that incentives will be created that encourage maximization of credits or refunds at the expense of tax return accuracy. To address this concern, while the amendment provides additional limited exceptions to the requirement that taxpayer consent be obtained in order to disclose or use tax return information, the temporary regulations prohibit, in the context of marketing or advertising, the use or disclosure of statistical compilations, or a part thereof, that identify dollar amounts of refunds, credits, or deductions associated with tax returns, whether or not the data are statistical, averaged, aggregated, or anonymous. The IRS will continue to rely on all existing enforcement powers to address concerns regarding advertising and marketing claims by tax return preparers.

In light of these considerations, the Treasury Department and the IRS, pursuant to these regulations, amend § 301.7216–2(o) of the final regulations published on January 7, 2008. The temporary regulations require that any disclosure of a statistical compilation, other than to satisfy reporting requirements or in conjunction with the disposition of a tax return business, be anonymous as to taxpayer identity, meaning that it must be in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Under these circumstances, the temporary regulations prohibit the disclosure of statistical compilations with cells containing data from fewer than ten tax returns. In addition to the disclosure exceptions set forth currently in § 301.7216–2(o), the temporary regulations authorize the disclosure by a tax return preparer in conjunction with bona fide research or public policy discussions concerning state or federal taxation or requiring data acquired during the tax return preparation process, and to provide tax information to the public regarding tax return preparation services. The temporary regulations allow section 501(c) organizations whose program services include the free preparation of tax

returns to disclose statistical compilations in order to comply with reporting requirements in connection with the receipt of grants or to facilitate the solicitation of grants. The temporary regulations also allow lawful recipients of statistical compilations to disclose or use such tax return information, subject to the provisions of § 301.7216–2T(o). The temporary regulations continue to allow the disclosure of statistical compilations in order to comply with financial accounting or regulatory reporting requirements or in conjunction with the sale or other disposition of the compiler's tax return preparation business. Finally, the temporary regulations prohibit, in the context of marketing or advertising, use or disclosure of statistical compilations, or a part thereof, that identify dollar amounts of refunds, credits, or deductions associated with tax returns, or percentages relating thereto, whether or not the data are statistical, averaged, aggregated, or anonymous.

3. § 301.7216–2(p)

The Treasury Department and the IRS are amending the regulations under section 7216 to clarify that tax return preparers may use and disclose tax return information to the extent necessary to accomplish a conflict of interest review undertaken to comply with the requirements established by any federal, state, or local law, agency, board, or commission, or by a professional association ethics committee or board, to identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer or tax return preparation business is employed or acquired by another tax return preparer or tax return preparation business, or when a tax return preparer is considering engaging a new client.

Upon further consideration, the Treasury Department and the IRS conclude that § 301.7216–2(p) should be amended, in the form of temporary regulations, to clarify that tax return preparers may use and disclose tax return information to the extent necessary to accomplish conflict reviews without compromising the rights of taxpayers to control the use or disclosure of their tax return information. Conflict reviews allow tax return preparers to fulfill legal and ethical requirements to identify and avoid client conflicts of interest. Conflict reviews also benefit taxpayers because these reviews provide taxpayers with the knowledge and comfort that their tax return preparers are acting in the taxpayers' best interests when providing tax return preparation services to them.

These regulations amend § 301.7216–2(p) by adding an exception to the written consent rules to allow disclosures of tax return information by a tax return preparer without taxpayer consent for the purpose of conducting conflict reviews, but only to the extent necessary to accomplish the reviews. For example, if the tax return preparer only needs to disclose the names of taxpayers, and nothing more, to allow the conflict review to be completed, then the tax return preparer shall not disclose any tax return information other than the taxpayers' names.

The regulations describe conflict reviews to include reviews that are undertaken to comply with requirements established by any federal, state, or local law, agency, board or commission, or by a professional association ethics committee or board, to either identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is employed or acquired by another tax return preparer, or to identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is considering engaging a new client. The regulations contemplate that the information necessary to accomplish a conflict review shall be disclosed to and used by only those persons permitted to be involved in the conflict review as described in the applicable law or regulations or as authorized by the relevant agency, board, commission, or professional association. The regulations also contemplate that, in order for tax return preparers to fulfill the required conflict reviews, circumstances may require the preparer to disclose the information necessary to perform a conflict review outside of the United States or a territory or possession of the United States. If disclosure outside of the United States is required to conduct a conflict review, the disclosure is authorized by these regulations provided the disclosing and receiving tax return preparers have procedures in place that are consistent with good business practices and designed to maintain the confidentiality of the disclosed information. The regulations also include specific restrictions on the further use and disclosure of information disclosed under this exception.

In light of these considerations, the Treasury Department and the IRS, pursuant to these regulations, amend § 301.7216–2(p) of the final regulations published on January 7, 2008, as described in this preamble.

4. Conclusion

The Treasury Department and the IRS anticipate that allowing tax return preparers to disclose and use the limited tax return information and anonymous statistical compilations for the limited purposes previously cited should provide the taxpayer and the public the policy benefits discussed above. The Treasury Department and the IRS also conclude that the amendments to §§ 301.7216–2(n), 301.7216–2(o), and 301.7216–2(p) appropriately balance concerns regarding safeguarding of sensitive tax return information against the tax industry's need to evaluate and use or disclose tax return information. In a separate notice of proposed rulemaking published with these regulations, the Treasury Department and IRS invite comments on the proposed rules.

Effect on Other Documents

The following publication is obsolete on or after January 4, 2010: Notice 2009–13 (2009–6 IRB 447).

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations because they are excepted from the notice and comment requirements of section 553(b) and (c) of the Administrative Procedure Act by section 7805(e) of the Internal Revenue Code and under the interpretative rule and good cause exceptions provided by sections 553(b)(3)(A) and (B) of that Act. These regulations are necessary to provide tax return preparers and taxpayers with immediate guidance on the application of the section 7216 rules regarding permissible disclosures and uses without the consent of the taxpayer, disclosures and uses that are currently required and necessary to allow the ongoing and beneficial educational, informational, operational, and funding efforts of tax return preparers and taxpayers to prepare for the imminent tax filing season, and to allow tax return preparers to comply with all legal and ethical requirements placed upon them by relevant government or professional agencies, boards, commissions or committees. These regulations are intended to provide additional limited exceptions to, and relief from, the rules prohibiting

disclosure of tax return information, including statistical compilations of tax return information and information necessary to accomplish conflict reviews, because these regulations provide tangible benefits to both taxpayers and tax return preparers and appropriately balance concerns regarding safeguarding of sensitive tax return information with appropriate disclosures and uses of that information. In addition, the regulations regarding § 301.7216–2(o) have been publicly noticed and subject to comment through the publication of Notice 2009–13. For these reasons good cause exists for dispensing with notice and public comment pursuant to section 553(b) and (c) of the Administrative Procedure Act (5 U.S.C. chapter 5). For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Molly K. Donnelly, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.7216–0 is amended by revising the entries for § 301.7216–2, paragraphs (n), (o), and (p) to read as follows:

§ 301.7216–0 Table of contents.

* * * * *

§ 301.7216–2 Permissible disclosures or uses without consent of the taxpayer.

* * * * *

(n) [Reserved]. For further guidance, see entry for § 301.7216–2T(n).

(o) [Reserved]. For further guidance, see entry for § 301.7216–2T(o).

(p) [Reserved]. For further guidance, see entry for § 301.7216–2T(p).

* * * * *

■ **Par. 3.** Section 301.7216–0T is added to read as follows:

§ 301.7216–0T Table of contents.

This section lists captions contained in § 301.7216–2T.

§ 301.7216–2T Permissible disclosures or uses without consent of the taxpayer (temporary).

(a) through (m) [Reserved]. For further guidance, see entries for § 301.7216–2(a) through (m).

(n) Lists for solicitation of tax return business.

(o) Producing statistical information in connection with tax return preparation business.

(p) Disclosure or use of information for quality, peer, or conflict reviews.

(q) through (r) [Reserved]. For further guidance, see entries for § 301.7216–2(q) through (r).

(s) Effective/applicability date.

(t) Expiration date.

■ **Par. 4.** Section 301.7216–2 is amended by revising paragraphs (n), (o), and (p) to read as follows:

§ 301.7216–2 Permissible disclosures or uses without consent of the taxpayer.

* * * * *

(n) [Reserved]. For further guidance, see § 301.7216–2T(n).

(o) [Reserved]. For further guidance, see § 301.7216–2T(o).

(p) [Reserved]. For further guidance, see § 301.7216–2T(p).

* * * * *

■ **Par. 5.** Section 301.7216–2T is added to read as follows:

§ 301.7216–2T Permissible disclosures or uses without consent of the taxpayer (temporary).

(a) through (m) [Reserved]. For further guidance, see § 301.7216–2(a) through (m).

(n) *Lists for solicitation of tax return business.* (1) A tax return preparer, other than a person who is a tax return preparer solely because the person provides auxiliary services as defined in § 301.7216–1(b)(2)(i)(B), may compile and maintain a separate list containing solely the names, addresses, e-mail addresses, phone numbers, taxpayer entity classification (including ''individual'' or the specific type of business entity), and income tax return form number of taxpayers whose tax returns the tax return preparer has prepared or processed. The Internal Revenue Service may issue guidance, by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)), describing other types of information that may be included in a list compiled and maintained pursuant to this paragraph. This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of providing tax information and general business or economic information or analysis for educational purposes, or soliciting additional tax return preparation services. The list may not be used to solicit any service or product other than tax return preparation services. The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless the transfer takes place in conjunction with the sale or other disposition of the compiler's tax return preparation business. Due diligence conducted prior to a proposed sale of a compiler's tax return preparation business is in conjunction with the sale or other disposition of a compiler's tax return preparation business and will not constitute a transfer of the list if conducted pursuant to a written agreement that requires confidentiality of the tax return information disclosed and expressly prohibits the further use or disclosure of the tax return information for any purpose other than that related to the purchase of the tax return preparation business. The tax return information submitted for the purpose of due diligence as authorized in this paragraph is a disclosure of tax return information subject to the provisions of this section. A person who acquires a taxpayer list, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business is subject to the provisions of this paragraph with respect to the list. The term *list,* as used in this paragraph (n), includes any record or system whereby the names and addresses of taxpayers are retained. The provisions of this paragraph (n) also apply to the transfer of any records and related papers to which this paragraph (n) applies.

(2) *Examples.* The following examples illustrate this paragraph (n):

Example 1. Preparer A is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). Preparer A's office is located in southeast Pennsylvania, and Preparer A prepares federal and state income tax returns for taxpayers who live in Pennsylvania, New Jersey, Maryland, and Delaware. Preparer A maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer A provides quarterly state income tax information updates to his individual taxpayer clients by e-mail or U.S. Mail. To ensure that his clients only receive the information updates that are relevant to

them, Preparer A uses his list to direct his outreach efforts towards clients by zip code and income tax return form number (Form 1040 and corresponding state income tax return form number). Preparer A may use the list information in this manner without taxpayer consent because he is providing tax information for educational or informational purposes and is targeting clients based solely upon tax return information that is authorized by this paragraph (n), by zip code, which is part of a taxpayer's address, and by income tax return form number. Preparer A also may deliver this information to his clients by e-mail or by U.S. Mail without taxpayer consent because those delivery methods use information authorized by this paragraph (n).

Example 2. Preparer B is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). Preparer B maintains a list of taxpayer clients containing the information allowed by this paragraph (n). Preparer B provides monthly federal income tax information updates in the form of a newsletter to all of her taxpayer clients by e-mail or U.S. Mail. When Preparer B hires a new employee, she announces each hire in the newsletter for the month that follows the hiring. Each announcement includes a photograph of the new employee, the employee's name, the employee's telephone number, a brief listing of the employee's qualifications, and a brief listing of the employee's employment responsibilities. Preparer B may use the tax return information described in this paragraph (n) in this manner without taxpayer consent because she is providing tax information for educational or informational purposes, to provide general federal income tax information updates. Preparer B may include the new employee announcements in the form described because this is considered tax information for educational or informational purposes, provided the announcements do not contain solicitations for non-tax return preparation services. Preparer B also may deliver this information to her clients by e-mail or by U.S. Mail without taxpayer consent because those delivery methods use information authorized by this paragraph (n).

(o) *Producing statistical information in connection with tax return preparation business.* (1) A tax return preparer may use tax return information, subject to the limitations specified in this paragraph (o), to produce a statistical compilation of data described in § 301.7216–1(b)(3)(i)(B). The purpose and use or disclosure of the statistical compilation must relate directly to the internal management or support of the tax return preparer's tax return preparation business, or to bona fide research or public policy discussions concerning state or federal taxation or requiring data acquired during the tax return preparation process. A tax return preparer may not disclose the compilation, or any part thereof, to any other person unless disclosure of the statistical compilation is anonymous as to taxpayer identity, does not disclose cells containing data from fewer than ten tax returns, and is in direct support of the tax return preparer's tax return preparation business or of bona fide research or public policy discussions concerning state or federal taxation or requiring data acquired during the tax return preparation process. A statistical compilation is anonymous as to taxpayer identity if it is in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. For purposes of this paragraph, marketing and advertising is in direct support of the tax return preparer's tax return preparation business provided the marketing and advertising is not false, misleading, or unduly influential. This paragraph, however, does not authorize the use or disclosure in marketing or advertising of any statistical compilations, or part thereof, that identify dollar amounts of refunds, credits, or deductions associated with tax returns, or percentages relating thereto, whether or not the data are statistical, averaged, aggregated, or anonymous. Disclosures made in support of fundraising activities conducted by Volunteer Return Preparation programs and other organizations described in section 501(c) of the Internal Revenue Code (Code) in direct support of their tax return preparation businesses are not marketing and advertising under this paragraph. A tax return preparer who produces a statistical compilation of data described in § 301.7216–1(b)(3)(i)(B) may disclose the compilation in order to comply with financial accounting or regulatory reporting requirements whether or not the statistical compilation is anonymous as to taxpayer identity or discloses cells containing data from fewer than ten tax returns.

A tax return preparer may not sell or exchange for value a statistical compilation of data described in § 301.7216–1(b)(3)(i)(B), in whole or in part, except in conjunction with the transfer of assets made pursuant to the sale or other disposition of the tax return preparer's tax return preparation business. The provisions of paragraph (n) of this section regarding the transfer of a taxpayer list also apply to the transfer of any statistical compilations of data to which this paragraph applies. A person who acquires a statistical compilation, or a part thereof, pursuant to the operation of this paragraph (o) or in conjunction with a sale or other disposition of a tax return preparation business, is subject to the provisions of this paragraph with respect to the compilation.

(2) *Examples.* The following examples illustrate this paragraph (o):

Example 1. Preparer A is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). In 2009, A used tax return information to produce a statistical compilation of data for both internal management purposes and to support A's tax return preparation business. The statistical compilation included a cell containing the information that A prepared 32 S corporation tax returns in 2009. In 2010, A decides to embark upon a new marketing campaign emphasizing its experience preparing small business tax returns. In the campaign, A discloses the cell containing the number of S corporation tax returns prepared in 2009. A's disclosure does not include any information that can be associated with or that can identify any specific taxpayers. A may disclose the anonymous statistical compilation without taxpayer consent.

Example 2. Preparer B is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). In 2010, in support of B's tax return preparation business, B wants to advertise that the average tax refund obtained for its clients in 2009 was $2,800. B may not disclose this information because it contains a statistical compilation reflecting average refund amounts.

Example 3. Preparer C is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A) and is a Volunteer Income Tax Assistance program. In 2010, in support of C's tax return preparation business, C submits a grant application to a charitable foundation to fund C's operations providing free tax return preparation services to low- and moderate-income families. In support of C's request, C includes anonymous statistical data from cells containing data from ten or more tax returns showing that, in 2009, C provided services to 500 taxpayers, that 95 percent of the taxpayer population served by C received the Earned Income Tax Credit (EITC), and that the average amount of the EITC received was $3,300. Despite the fact that this information constitutes an average credit amount, C may disclose the information to the charitable foundation because disclosures made in support of fundraising activities conducted by Volunteer Income Tax Assistance programs and other organizations described in section 501(c) of the Code in direct support of their tax return preparation business are not considered marketing and advertising for purposes of § 301.7216–2(o)(1).

Example 4. Preparer D is a tax return preparer as defined by § 301.7216–1(b)(2)(i)(A). In December 2009, D produced an anonymous statistical compilation of tax return information obtained during the 2009 filing season. In 2010, D wants to disclose portions of the anonymous statistical compilation from cells containing data from ten or more tax returns in connection with the marketing of its financial advisory and asset planning services. D is required to receive taxpayer consent under § 301.7216–3 before disclosing the tax return information contained in the anonymous statistical

compilation because the disclosure is not being made in support of D's tax return preparation business.

(p) *Disclosure or use of information for quality, peer, or conflict reviews.* (1) The provisions of section 7216(a) and § 301.7216–1 shall not apply to any disclosure for the purpose of a quality or peer review to the extent necessary to accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting, or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Revenue Service. See Department of the Treasury Circular 230, 31 CFR part 10. Tax return information may also be disclosed to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (p), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the tax return preparer being reviewed. The tax return preparer being reviewed will maintain a record of the review including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel.

(2) The provisions of section 7216(a) and § 301.7216–1 shall not apply to any disclosure necessary to accomplish a conflict review. A conflict review is a review undertaken to comply with requirements established by any federal, state, or local law, agency, board or commission, or by a professional association ethics committee or board, to either identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is employed or acquired by another tax return preparer, or to identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is considering engaging a new client. Tax return information gathered in conducting a conflict review may be used only for purposes of a conflict review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than those responsible for identifying, evaluating, and monitoring legal and ethical conflicts of interest. No tax return information identifying a taxpayer may be disclosed outside of the United States or a territory or possession of the United States unless the disclosing and receiving tax return preparers have procedures in place that are consistent with good business practices and designed to maintain the confidentiality of the disclosed return information.

(3) Any person (including administrative and support personnel) receiving tax return information in connection with a quality, peer, or conflict review is a tax return preparer for purposes of sections 7216(a) and 6713(a). Tax return information disclosed and used for purposes of a quality, peer, or conflict review shall not be used or disclosed for any other purpose.

(q) through (r) [Reserved]. For further guidance, see § 301.7216–2(q) through (r).

(s) *Effective/applicability date.* This section applies to disclosures or uses of tax return information occurring on or after January 4, 2010.

(t) *Expiration date.* The applicability of this section expires on or before December 28, 2012.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 24, 2009.

Michael Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–31115 Filed 12–29–09; 4:15 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0561–200929; FRL–9098–8]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina: Greensboro-Winston Salem-High Point; Determination of Attaining Data for the 1997 Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Greensboro-Winston Salem-High Point, North Carolina, (hereafter referred to as ''Greensboro, North Carolina'') nonattainment area for the 1997 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has attaining data for the 1997 $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This final rule is effective on January 4, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2009–0561. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey may be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.* For information relating to the North Carolina State Implementation Plan (SIP), please

contact Nacosta Ward at (404) 562–9140. Ms. Ward can also be reached at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking?
II. What Is the Effect of This Action?
III. When Is This Action Effective?
IV. What Is EPA's Final Action?
V. What Are the Statutory and Executive Order Reviews?

I. What Action Is EPA Taking?

EPA is determining that the Greensboro, North Carolina, nonattainment area has attaining data for the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that show the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS based on the 2006–2008 data. In addition, quality controlled and quality assured monitoring data submitted during the calendar year 2009, which are available in the EPA Air Quality System database, but not yet certified, indicate that this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

Other specific requirements of the determination and the rationale for EPA's proposed action are explained in the notice of proposed rulemaking (NPR) published on October 6, 2009 (74 FR 51246) and will not be restated here. The comment period for the NPR closed on November 5, 2009. No public comments were received in response to the NPR.

II. What Is the Effect of This Action?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit attainment demonstrations, associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS as long as this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

III. When Is the Action Effective?

EPA finds that there is good cause for this approval to become effective on the date of publication of this action in the **Federal Register,** because a delayed effective date is unnecessary due to the nature of the approval. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As noted above, this determination of attainment suspends the requirements for the Greensboro, North Carolina, $PM_{2.5}$ nonattainment area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the standard as long as this area continues to meet the 1997 $PM_{2.5}$ NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, this nonattainment area's suspension from these requirements provide good cause to make this rule effective on the date of publication of this action in the **Federal Register,** pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the State of North Carolina, do not need time to adjust and prepare before the rule takes effect.

IV. What Is EPA's Final Action?

EPA is determining that the Greensboro, North Carolina, nonattainment area has attaining data for the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data showing that this area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS during the period 2006–2008. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this area to submit attainment demonstrations, associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS as long as the Area continues to meet the 1997 $PM_{2.5}$ NAAQS.

V. What Are Statutory and Executive Order Reviews?

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 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, pertaining to the determination of attaining data for the 1997 fine particulate matter standard for the Greensboro, North Carolina, $PM_{2.5}$ nonattainment area, 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, Particulate matter.

Dated: December 15, 2009

J. Scott Gordon,

Acting Regional Administrator, Region 4.

■ Accordingly, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section § 52.1781 is amended by adding paragraph (e) to read as follows:

§ 52.1781 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(e) *Determination of Attaining Data.* EPA has determined, as of January 4, 2010, the Greensboro-Winston Salem-High Point, North Carolina nonattainment area has attaining data for the 1997 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

[FR Doc. E9–31083 Filed 12–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2009–0164–200916; FRL–9099–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Shelby County, Tennessee Portion of the Memphis, TN-Arkansas 1997 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a request submitted on February 26, 2009, from the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, to redesignate the Tennessee portion of the bi-state Memphis, Tennessee-Arkansas 8-hour ozone nonattainment area (hereafter referred to as the ''bi-state Memphis Area'') to attainment for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The bi-state Memphis 1997 8-hour ozone NAAQS nonattainment area is composed of Shelby County, Tennessee and Crittenden County, Arkansas. EPA's approval of the redesignation request is based on the determination that the bi-state Memphis Area has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA), including the determination that the bi-state Memphis Area has attained the 1997 8-hour ozone standard. Additionally, EPA is approving a revision to the Tennessee State Implementation Plan (SIP) including the 1997 8-hour ozone maintenance plan for Shelby County, Tennessee that contains the new 2006, 2009, 2017, and 2021 motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for Shelby County, Tennessee. This action also approves the emissions inventory submitted with the maintenance plan (under the CAA section 182(a)(1)). The State of Arkansas has submitted a similar redesignation request and maintenance plan for the Arkansas portion of this 1997 8-hour ozone area. EPA is taking action on Arkansas' redesignation request, emissions inventory and maintenance plan through a separate rulemaking action. On March 12, 2008, EPA issued a revised 8-hour ozone standard. EPA later announced on September 16, 2009, that it may reconsider this revised ozone standard. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS. Requirements for the bi-state Memphis Area under the 2008 standard will be addressed in the future.

DATES: *Effective Date:* This rule will be effective February 3, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0164. All documents in the docket are listed on the*http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Jane Spann may be reached by phone at (404) 562–9029 or via electronic mail at *spann.jane@epa.gov.* The telephone number for Ms. Bradley is (404) 562–9352 and the electronic mail at *bradley.twunjala@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Is the Background for the Actions?

On February 26, 2009, the State of Tennessee, through TDEC, submitted a request to redesignate Shelby County, Tennessee (as part of the bi-state Memphis Area) to attainment for the 1997 8-hour ozone standard, and for EPA approval of the Tennessee SIP revision containing a maintenance plan for Shelby County, Tennessee. In an action published on November 19, 2009 (74 FR 59943), EPA proposed to approve the redesignation of Shelby County, Tennessee (as part of the bi-state Memphis Area) to attainment. EPA also proposed approval of Tennessee's plan for maintaining the 1997 8-hour NAAQS as a SIP revision, including the emissions inventory submitted pursuant to CAA section 182(a)(1); and proposed to approve the NOx and VOC MVEBs for Shelby County that were contained in the maintenance plan. In the November 19, 2009, proposed action, EPA also provided information on the status of its transportation conformity adequacy determination for the Shelby County NO_X and VOC MVEBs. EPA received no comments on the November 19, 2009, proposal. Additionally, in a separate notice, EPA has already found the NO_X and VOC MVEBs, as contained in Tennessee's maintenance plan for Shelby County, adequate for the purposes of transportation conformity. The MVEBs included in the maintenance plan area as follows:

TABLE 1—SHELBY COUNTY VOC AND NO_X MVEBS

[Summer season tons per day]

Year	2006	2009	2017	2021
NO_X	55.878	55.620	55.173	54.445
VOC	25.216	27.240	18.323	13.817

EPA's adequacy public comment period on these MVEBs (as contained in Tennessee's submittal) began on March 12, 2009, and closed on April 13, 2009. No comments were received during EPA's adequacy public comment period. In a letter dated September 18, 2009, EPA informed the State of Tennessee of its intent to make an affirmative adequacy determination for the MVEBs contained in this maintenance plan for Shelby County, Tennessee. On November 12, 2009 (74 FR 58277), EPA published a **Federal Register** notice deeming the MVEBs for Shelby County, Tennessee adequate for transportation conformity purposes. EPA provided a separate adequacy posting for the MVEBs in association with Crittenden County, Arkansas. The Crittenden County, Arkansas MVEBs (in association with the bi-state Memphis Area) were found adequate through a separate action published May 7, 2009 (74 FR 21356). As was discussed in greater detail in the November 19, 2009, proposal, this redesignation is for the 1997 8-hour ozone designations finalized in April 30, 2004 (69 FR 23857). Various aspects of EPA's Phase 1 8-hour ozone implementation rule were challenged in court and on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS, remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision affirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

With respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8th decision clarified that for those areas with 1-hour MVEBs in their 1-hour maintenance plans, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR Part 93. Shelby County, Tennessee has 1-hour budgets and is currently using these budgets to demonstrate transportation conformity until 1997 8-hour budgets are in place.

For the above reasons, and those set forth in the November 19, 2009, proposal for the redesignation of Shelby County, Tennessee, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of Shelby County, Tennessee to attainment. Even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the

CAA and longstanding policies regarding redesignation requests.

II. What Actions Is EPA Taking?

EPA is taking final action to approve Tennessee's redesignation request and to change the legal designation of Shelby County, Tennessee from nonattainment to attainment for the 1997 8-hour ozone NAAQS. The bi-state Memphis 1997 8-hour ozone NAAQS nonattainment area is composed of Shelby County, Tennessee and Crittenden County, Arkansas. The redesignation request, maintenance plan and emission inventory in association with the Arkansas portion of this Area will be addressed through a separate, but coordinated action. In this action, EPA is also approving Tennessee's 1997 8-hour ozone maintenance plan for Shelby County, Tennessee (such approval being one of the CAA criteria for redesignation to attainment status), including the emissions inventory which was submitted pursuant to CAA section 182(a)(1). The maintenance plan is designed to help keep Shelby County, Tennessee (as part of the bi-state Memphis Area) in attainment for the 1997 8-hour ozone NAAQS through 2021. These approval actions are based on EPA's determination that Tennessee has demonstrated that Shelby County, Tennessee has met the criteria for redesignation to attainment specified in the CAA, including a demonstration that the bi-state Memphis Area has attained the 1997 8-hour ozone standard. EPA's analyses of Tennessee's 1997 8-hour ozone redesignation request and maintenance plan are described in detail in the proposed rule published November 19, 2009 (74 FR 59943).

Consistent with the CAA, the maintenance plan that EPA is approving also includes 2006, 2009, 2017, and 2021 MVEBs for NO_X and VOC for Shelby County, Tennessee. In this action, EPA is approving these NO_X and VOC MVEBs for the purposes of transportation conformity. For regional emission analysis years that involve years prior to 2017, the new 2009 MVEB are the applicable budgets (for the purpose of conducting transportation conformity analyses). For regional emission analysis years that involve years prior to 2021, the new 2017 MVEB are the applicable budgets (for the purpose of conducting transportation conformity analyses). For regional emission analysis years that involve the year 2021 and beyond, the applicable budgets, for the purpose of conducting transportation conformity analyses, are the new 2021 MVEB. In practical terms, the 2006 MVEBs will not be used in Shelby County, Tennessee because this action is being taken in 2009, and there are MVEBs being established for the year 2009 which are required to be used.

III. Why Is EPA Taking These Actions?

EPA has determined that the bi-state Memphis Area has attained the 1997 8-hour ozone standard and has also determined that Tennessee has demonstrated that all other criteria for the redesignation of Shelby County, Tennessee (as part of the bi-state Memphis Area) from nonattainment to attainment of the 1997 8-hour ozone NAAQS have been met. See, section 107(d)(3)(E) of the CAA. EPA is also taking final action to approve the maintenance plan for Shelby County, Tennessee as meeting the requirements of sections 175A and 107(d) of the CAA, and the emissions inventory as meeting the requirements of section 182(a)(1) of the CAA. Furthermore, EPA is approving the new NO_X and VOC MVEBs for the years 2006, 2009, 2017, and 2021 contained in Tennessee's maintenance plan for Shelby County because these MVEBs are consistent with maintenance for the bi-state Memphis Area. In the November 19, 2009, proposal to redesignate Shelby County, Tennessee (as part of the bi-state Memphis Area), EPA described the applicable criteria for redesignation to attainment and its analysis of how those criteria have been met. The rationale for EPA's findings and actions is set forth in the proposed rulemaking and summarized in this final rulemaking.

IV. What Are the Effects of These Actions?

Approval of the redesignation request changes the legal designation of Shelby County, Tennessee (as part of the bi-state Memphis Area) from nonattainment to attainment for the 1997 8-hour ozone NAAQS, found at 40 CFR part 81. The approval also incorporates into the Tennessee SIP a plan for maintaining the 1997 8-hour ozone NAAQS in the bi-state Memphis Area through 2021. The maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS, and establishes NO_X and VOC MVEBs for the years 2006, 2009, 2017, and 2021 for Shelby County, Tennessee. Additionally, this action approves the emissions inventory for this area pursuant to section 182(a)(1) of the CAA. The other portion of the bi-state Memphis Area is Crittenden County, Arkansas. EPA is taking action on Arkansas' redesignation request for Crittenden County Arkansas (as part of the bi-state Memphis area) and the associated emissions inventory and maintenance plan through a separate rulemaking action.

V. Final Action

After evaluating Tennessee's redesignation request, EPA is taking final action to approve the redesignation and change the legal designation of Shelby County, Tennessee (as part of the bi-state Memphis Area) from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA is addressing the redesignation request, emission inventory and maintenance plan for Crittenden County, Arkansas (as a portion of the bi-state Memphis Area) in a separate but coordinated action. Through this action, EPA is also approving into the Tennessee SIP, the 1997 8-hour ozone maintenance plan for the Shelby County, Tennessee, which includes the new NO_X MVEBs of 55.878 tons per day (tpd) for 2006, 55.620 tpd for 2009, 55.173 tpd for 2017, and 54.445 tpd for 2021; and new VOC MVEBs of 25.216 tpd for 2006, 27.240 tpd for 2009, 18.323 tpd for 2017, and 13.817 tpd for 2021. These new MVEBs were found adequate through a previous action (74 FR 58277). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e). Additionally, EPA is approving the emissions inventory for the Shelby County pursuant to section 182(a)(1) of the CAA.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection and Air pollution control.

Dated: December 22, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ Accordingly, 40 CFR part 52 and 81 are 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 RR—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry at the end of the table for ''8-Hour Ozone Maintenance Plan for Shelby County, Tennessee'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
8-Hour Ozone Maintenance plan for the Shelby County, Tennessee Area.	Memphis, Shelby County.	February 26, 2009	January 4, 2010 [Insert citation of publication].	

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.343, the table entitled ''Tennessee-Ozone (8-Hour Standard)'' is amended by revising the entry for ''Memphis, TN–AR: Shelby County,'' to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE-OZONE

[8-hour standard]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Memphis, TN–AR: Shelby County	January 4, 2010	Attainment		
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Effective April 15, 2008.

* * * * *

[FR Doc. E9–31103 Filed 12–31–09; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8111]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in Community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New Jersey:				
Clayton, Borough of, Gloucester County	340198	May 15, 1973, Emerg; March 11, 1983, Reg; January 20, 2010, Susp.	Jan. 20, 2010	Jan. 20, 2010.
Deptford, Township of, Gloucester County.	340199	June 16, 1975, Emerg; November 17, 1982, Reg; January 20, 2010, Susp.	do*	Do.
East Greenwich, Township of, Gloucester County.	340200	March 27, 1975, Emerg; December 1, 1982, Reg; January 20, 2010, Susp.	do	Do.
Elk, Township of, Gloucester County	340201	December 11, 1975, Emerg; October 21, 1983, Reg; January 20, 2010, Susp.	do	Do.
Glassboro, Borough of, Gloucester County.	340203	June 5, 1975, Emerg; August 16, 1982, Reg; January 20, 2010, Susp.	do	Do.
Greenwich, Township of, Gloucester County.	340204	April 18, 1973, Emerg; September 16, 1982, Reg; January 20, 2010, Susp.	do	Do.
Harrison, Township of, Gloucester County.	340205	April 7, 1975, Emerg; April 1, 1983, Reg; January 20, 2010, Susp.	do	Do.
Logan, Township of, Gloucester County	340206	June 29, 1976, Emerg; January 6, 1983, Reg; January 20, 2010, Susp.	do	Do.
Mantua, Township of, Gloucester County.	340207	May 8, 1975, Emerg; November 3, 1982, Reg; January 20, 2010, Susp.	do	Do.
Monroe, Township of, Gloucester County.	340208	August 12, 1974, Emerg; January 20, 1982, Reg; January 20, 2010, Susp.	do	Do.
Paulsboro, Borough of, Gloucester County.	340210	May 13, 1975, Emerg; September 2, 1982, Reg; January 20, 2010, Susp.	do	Do.
Swedesboro, Borough of, Gloucester County.	340519	July 23, 1975, Emerg; July 5, 1982, Reg; January 20, 2010, Susp.	do	Do.
Washington, Township of, Gloucester County.	340213	February 1, 1974, Emerg; November 17, 1982, Reg; January 20, 2010, Susp.	do	Do.
West Deptford, Township of, Gloucester County.	340214	December 22, 1972, Emerg; June 1, 1982, Reg; January 20, 2010, Susp.	do	Do.
Westville, Borough of, Gloucester County.	340215	July 2, 1975, Emerg; May 1, 1980, Reg; January 20, 2010, Susp.	do	Do.
Woolwich, Township of, Gloucester County.	340217	May 13, 1975, Emerg; September 2, 1982, Reg; January 20, 2010, Susp.	do	Do.
Region III				
West Virginia:				
Blacksville, City of, Monongalia County	540140	October 28, 1975, Emerg; December 26, 1978, Reg; January 20, 2010, Susp.	do	Do.
Granville, Town of, Monongalia County	540272	April 7, 1975, Emerg; December 15, 1983, Reg; January 20, 2010, Susp.	do	Do.
Monongalia County, Unincorporated Areas.	540139	October 31, 1975, Emerg; May 1, 1984, Reg; January 20, 2010, Susp.	do	Do.
Morgantown, City of, Monongalia County.	540141	January 23, 1975, Emerg; August 1, 1979, Reg; January 20, 2010, Susp.	do	Do.
Star City, Town of, Monongalia County	540273	April 18, 1975, Emerg; August 1, 1978, Reg; January 20, 2010, Susp.	do	Do.
Westover, City of, Monongalia County	540274	January 27, 1975, Emerg; August 1, 1978, Reg; January 20, 2010, Susp.	do	Do.
Region IV				
Tennessee:				
Hohenwald, City of, Lewis County	470304	April 16, 1986, Emerg; July 2, 1987, Reg; January 20, 2010, Susp.	do	Do.
Lewis County, Unincorporated Areas	470103	November 25, 1998, Emerg; June 1, 2005, Reg; January 20, 2010, Susp.	do	Do.
Region V				
Illinois:				
Bourbonnais, Village of, Kankakee County.	170337	July 24, 1975, Emerg; September 29, 1978, Reg; January 20, 2010, Susp.	do	Do.
Bradley, Village of, Kankakee County	170338	October 29, 1974, Emerg; March 1, 1978, Reg; January 20, 2010, Susp.	do	Do.
Kankakee, City of, Kankakee County	170339	May 29, 1973, Emerg; April 17, 1978, Reg; January 20, 2010, Susp.	do	Do.
Kankakee County, Unincorporated Areas.	170336	April 28, 1972, Emerg; July 2, 1979, Reg; January 20, 2010, Susp.	do	Do.
Manteno, Village of, Kankakee County	170878	May 16, 1975, Emerg; November 2, 1977, Reg; January 20, 2010, Susp.	do	Do.

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in Community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Momence, City of, Kankakee County	170340	August 8, 1975, Emerg; November 2, 1977, Reg; January 20, 2010, Susp.	.....do	Do.
Wisconsin: Clintonville, City of, Waupaca County.	550494	April 2, 1974, Emerg; September 19, 1984, Reg; January 20, 2010, Susp.	.....do	Do.
Embarrass, Village of, Waupaca County	550495	May 2, 1975, Emerg; June 17, 1986, Reg; January 20, 2010, Susp.	.....do	Do.
Fremont, Village of, Waupaca County ..	550496	March 29, 1974, Emerg; June 15, 1977, Reg; January 20, 2010, Susp.	.....do	Do.
Iola, Village of, Waupaca County	550497	September 29, 1975, Emerg; September 4, 1985, Reg; January 20, 2010, Susp.	.....do	Do.
Kendall, Village of, Monroe County	550287	June 3, 1974, Emerg; September 18, 1986, Reg; January 20, 2010, Susp.	.....do	Do.
Manawa, City of, Waupaca County	550498	March 17, 1975, Emerg; May 4, 1988, Reg; January 20, 2010, Susp.	.....do	Do.
Marion, City of, Waupaca County	550499	September 24, 1974, Emerg; May 4, 1988, Reg; January 20, 2010, Susp.	.....do	Do.
Melvina, Village of, Monroe County	550288	March 2, 1981, Emerg; March 2, 1981, Reg; January 20, 2010, Susp.	.....do	Do.
Monroe County, Unincorporated Areas	550571	February 18, 1976, Emerg; May 3, 1982, Reg; January 20, 2010, Susp.	.....do	Do.
New London, City of, Waupaca County	550308	March 10, 1972, Emerg; March 15, 1977, Reg; January 20, 2010, Susp.	.....do	Do.
Norwalk, Village of, Monroe County	550289	September 25, 1975, Emerg; N/A, Reg; January 20, 2010, Susp.	.....do	Do.
Sparta, City of, Monroe County	550290	April 15, 1975, Emerg; August 3, 1981, Reg; January 20, 2010, Susp.	.....do	Do.
Tomah, City of, Monroe County	550291	May 27, 1975, Emerg; August 17, 1981, Reg; January 20, 2010, Susp.	.....do	Do.
Waupaca, City of, Waupaca County	550502	May 13, 1975, Emerg; August 3, 1989, Reg; January 20, 2010, Susp.	.....do	Do.
Waupaca County, Unincorporated Areas.	550492	December 17, 1971, Emerg; August 15, 1977, Reg; January 20, 2010, Susp.	.....do	Do.
Weyauwega, City of, Waupaca County	550503	May 15, 1975, Emerg; July 1, 1987, Reg; January 20, 2010, Susp.	.....do	Do.
Wilton, Village of, Monroe County	550292	July 28, 1975, Emerg; October 15, 1985, Reg; January 20, 2010, Susp.	.....do	Do.
Wyeville, Village of, Monroe County	550293	July 18, 1975, Emerg; March 1, 1984, Reg; January 20, 2010, Susp.	.....do	Do.
Region VI				
Arkansas:				
Garland County, Unincorporated Areas	050433	May 25, 1990, Emerg; February 15, 1991, Reg; January 20, 2010, Susp.	.....do	Do.
Hot Springs, City of, Garland County	050084	November 12, 1971, Emerg; December 18, 1979, Reg; January 20, 2010, Susp.	.....do	Do.
Lonsdale, Town of, Garland County	050586	N/A, Emerg; April 14, 2006, Reg; January 20, 2010, Susp.	.....do	Do.
Region IX				
California:				
Port Hueneme, City of, Ventura County	065051	May 14, 1971, Emerg; September 24, 1984, Reg; January 20, 2010, Susp.	.....do	Do.
Thousand Oaks, City of, Ventura County.	060422	November 13, 1970, Emerg; September 29, 1978, Reg; January 20, 2010, Susp.	.....do	Do.

*.....do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 23, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, and 178

[Docket Nos. PHMSA–2007–0065 (HM–224D) and PHMSA–2008–0005 (HM–215J)]

RIN 2137–AE54

Hazardous Materials: Revision to Requirements for the Transportation of Batteries and Battery-Powered Devices; and Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Correction

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

ACTION: Final rule; corrections.

SUMMARY: On January 14, 2009, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule amending the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. The revisions were necessary to harmonize the HMR with recent changes to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, the International Maritime Dangerous Goods Code, Transport Canada's Transportation of Dangerous Goods Regulations, and the United Nations Recommendations on the Transport of Dangerous Goods. These revisions also included amendments and clarifications addressing the safe transportation of batteries and battery-powered devices. This final rule corrects several errors in the January 14, 2009 final rule.

DATES: *Effective date:* The effective date of these amendments is January 4, 2010. *Applicability date:* These amendments are applicable beginning January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Charles Betts, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On January 14, 2009, PHMSA published a final rule under Docket Numbers PHMSA–2007–0065 (HM–224D) and PHMSA–2008–0005 (HM–215J) [74 FR 2200] revising the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. The revisions were necessary to harmonize the HMR with recent changes to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI), the International Maritime Dangerous Goods Code (IMDG Code), Transport Canada's Transportation of Dangerous Goods Regulations (TDG Regulations), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). These revisions also included amendments and clarifications addressing the safe transportation of batteries and battery-powered devices. This final rule corrects several errors in the final rule. Because these amendments do not impose new requirements notice and public comment procedures are unnecessary.

II. Appeals to the Final Rule

We received two appeals to the January 14, 2009 final rule from the Dangerous Goods Transport Consulting, Inc. (DGTC) and HMT Associates, LLC. Both DGTC and HMT Associates express concerns about the provisions of the final rule applicable to the transportation of fuel cell cartridges. These appeals are discussed in detail below.

A. Dangerous Goods Transport Consulting, Inc.

The January 14, 2009 final rule revised the requirements for the transportation of fuel cell cartridges under § 173.230 of the HMR (49 CFR Parts 171–180). In addition to the proper shipping name for flammable liquid fuel cell cartridges (UN3473) already included in the § 172.101 Hazardous Materials Table (HMT), the final rule added four new proper shipping names to the HMT to describe the range of fuels used in fuel cell cartridges: ''Water-reactive substances,'' UN3476; ''Corrosive substances,'' UN3477; ''Liquefied flammable gas,'' UN3478; and ''Hydrogen in metal hydride,'' UN3479.

As indicated by the expanded list of proper shipping names, fuel cell cartridges contain a number of different types of fuels with distinct hazards. Because of this variety of fuel types, we also amended § 173.230 to provide comprehensive requirements including packaging to address the hazards for all fuel cell cartridge types. In its appeal, DGTC expressed concern that the provision in § 173.230(g) prohibiting the air transport of fuel cell cartridges as limited quantities is not practical, reasonable or in the public interest. Specifically, DGTC asserts its understanding that prohibiting the air transport of fuel cell cartridges as limited quantities is not consistent with provisions in § 173.230(h) that allow fuel cell cartridges conforming to § 173.230(g) and defined as consumer commodities to be renamed ''Consumer commodity'' and reclassed as ORM–D since consumer commodities are authorized for transport by air in Column (9) of the HMT for the entry ''Consumer commodity.'' DGTC also asserts inconsistency with HMR provisions that allow for air transport of limited quantities of the fuel types typically found in the fuel cell cartridges in inner packagings subject to less stringent requirements than those for the fuel cell cartridges themselves. DGTC further contends that the prohibition imposes unwarranted additional transportation costs and places emerging fuel cell technologies at a competitive disadvantage with other portable sources of electric power such as batteries and could be detrimental to their development as an alternative energy source.

The requirements applicable to the transportation of fuel cells adopted in the January 14, 2009 final rule were initially proposed in a notice of proposed rulemaking (NPRM) published July 31, 2008 (73 FR 44820) and are consistent with standards adopted internationally in the revised editions of the ICAO TI, the IMDG Code, and the UN Recommendations. Commenters to the NPRM supported the fuel cell proposals; no commenter addressed the potential economic impact of the proposals. We note, with regard to DGTC's concern about the economic impact of the limited quantity prohibition, that harmonization

promotes safety and facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements. Thus, the benefits of a harmonized domestic and international transportation regime outweigh the costs that may be incurred. As DGTC acknowledged in its appeal, the 2009–2010 ICAO TI also prohibit the transportation of fuel cell cartridges as limited quantities on aircraft. Authorizing limited quantity exceptions for fuel cell cartridges in the HMR would be inconsistent with the ICAO TI; such differing domestic and international requirements could cause confusion for both shippers and carriers, thereby adversely affecting safety.

We agree that the prohibition of air transport of limited quantities of fuels when contained in fuel cell cartridges is inconsistent with the current authorization that allows for air transport of limited quantities of the same fuels found in fuel cell cartridges when shipped under the proper shipping name appropriate to the fuel (*e.g.*, ''Methanol, UN1230''). The ICAO Dangerous Goods Panel is currently considering adoption of limited quantity exceptions, based in part on a proposal from the U.S. Fuel Cell Council (FCC). Based on the decision of the ICAO Dangerous Goods Panel, we will consider adopting limited quantity exceptions for air transport of fuel cell cartridges in a future rulemaking. Therefore, in this final rule, we are not revising the current prohibition of air transport of fuel cell cartridges as limited quantities.

B. HMT Associates, LLC

The January 14, 2009 final rule also revised the packaging requirements for the transportation of fuel cell cartridges under § 173.230 of the HMR. Specifically, paragraph (e) of this section provides for authorized packagings; paragraph (f) sets forth additional requirements for transportation by aircraft. HMT Associates expressed concern that the provision in § 173.230(e) to require intermediate packaging for fuel cell cartridges packed with equipment for all modes of transportation, not just air transport, differs from the packaging requirements for fuel cell cartridges packed with equipment under international standards for highway, rail, and vessel transport. Specifically, HMT Associates states:

> As it relates to fuel cell cartridges packed with equipment, the [UN Recommendations, as well as the IMDG Code] Packing Instruction P004 requires: [f]or fuel cell cartridges * * * packed with equipment, strong outer packagings. When fuel cell cartridges are packed with equipment, they shall be packed in inner packagings or placed in the outer packaging with cushioning material or divider(s) so that the fuel cell cartridges are protected against damage that may be caused by the movement or placement of the contents within the outer packaging.

With regard to the packaging requirements for fuel cell cartridges packed with equipment in the January 14, 2009 final rule, § 173.230(e)(2)(i) requires fuel cell:

> Cartridges packed with equipment to be packed in intermediate packagings together with the equipment they are capable of powering. The fuel cell cartridges and the equipment must be packaged with cushioning material or dividers or inner packaging so that the fuel cell cartridges are protected against damage that may be caused by the shifting or placement of the equipment and the cartridges within the outer packaging.

HMT Associates noted that the use of an intermediate packaging is required under the ICAO TI only when fuel cell cartridges packed with equipment are transported by aircraft (re: Packing Instruction 217).

Additionally, HMT Associates indicated that the wording of § 173.230(e)(2)(i) as adopted in the final rule is not as it was proposed in our NPRM. The wording was revised based on a comment submitted to the docket by FCC. The NPRM did not propose use of an intermediate packaging. In the preamble of the final rule [74 FR 2223], we agreed with FCC that the packaging requirements should be consistent with the UN Recommendations and the ICAO TI and indicated that revisions made to the regulatory text of the NPRM were intended to achieve consistency.

Finally, HMT Associates indicated that under the additional provisions for transportation by aircraft in § 173.230(f), the language specific to packaging requirements for fuel cell cartridges packed with equipment in the final rule differs from the proposed language in the NPRM. They noted that the proposed language is consistent with international standards by limiting the intermediate packaging requirement to the additional requirements for air transport rather than the language in the final rule that has additional requirements supplementing the general requirements for transport of fuel cell cartridges packed with equipment and transported by all modes.

HMT Associates is correct that the final rule language highlighted in its appeal was adopted in error. We intended that the requirement for intermediate packaging of fuel cell cartridges packed with equipment should be limited to packaging prepared for air transport consistent with the ICAO TI. This is also consistent with the suggested revisions to § 173.230(e) and (f) in comments we received from FCC in response to the July 31, 2008 NPRM. FCC suggested that we revise the language in paragraph (f) to include a requirement that:

> For transportation by aircraft * * * when fuel cell cartridges are packed with equipment, they must be packed in intermediate packagings together with the equipment they are capable of powering * * *.

Therefore, HMT Associates' appeal is granted. In this final rule, we are correcting paragraphs (e)(2)(i) and (f)(4) in § 173.230 to fully align the fuel cell cartridges packaging requirements with the multimodal packing requirements as prescribed in ICAO TI Packing Instruction 217 and UN Recommendations Packing Instruction P004. We are also making clarifying corrections to paragraphs (e) and (f) for consistency with changes made based on the appeal and for consistent use of terms in the section. For example, in paragraph (f)(2) we are correcting ''fuel cells'' to read ''fuel cell cartridges'' to clarify the applicability to fuel cell cartridges.

III. Corrections and Amendments

In this final rule, we are making editorial corrections and clarifying amendments to sections that were amended by the January 14, 2009 final rule for purposes of consistency with grammatical conventions and for consistency with similar provisions within the HMR. We are also making conforming amendments to sections in the HMR affected by the January 14, 2009 final rule. None of the clarifying or conforming amendments are new requirements but provide for a better understanding of the requirements adopted in the January 14, 2009 final rule. The corrections and amendments are as follows:

Part 171

Section 171.7

This section lists material incorporated by reference into the HMR. In the January 14, 2009 final rule, we updated the address for ICAO reference materials; however, we did not include the most current address. In this final rule, we are correcting the entry to reflect the current address.

Part 172

Section 172.101

This section outlines the purpose and instructions for use of the Hazardous Materials Table (HMT). We are removing an obsolete transitional period in paragraph (l)(3) and replacing it with a transition period specific to marking of cylinders containing ''Chlorine, UN1017.'' Under HM–215J, we revised the proper shipping name entry for ''Chlorine'' to include Division 5.1 (oxidizer) as an additional subsidiary hazard. Based on this revision, chlorine cylinders marked in accordance with CGA C–7, Appendix A (*see* § 172.400a) must now include the Division 5.1 subsidiary hazard number as part of the marking. To allow for additional time to incorporate this subsidiary hazard number as part of the marking, we are authorizing the use of preprinted cylinder markings without the Division 5.1 subsidiary hazard number until January 1, 2011.

We are also making a number of editorial corrections to entries in the § 172.101 Hazardous Materials Table (HMT). The editorial corrections are as follows:

• For the entry ''Gasoline *includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol*, UN1203,'' the Special provisions in Column (7) are corrected to read ''144, 177, B1, B33, IB2, T4, TP1.''

• The proper shipping name for the entry ''Regulated medical waste, n.o.s. or Clinical waste, unspecified, n.o.s. or (BIO)Medical waste, n.o.s., or Biomedical waste, n.o.s. or Medical waste, n.o.s., UN3291'' is corrected to read ''Regulated medical waste, n.o.s. or Clinical waste, unspecified, n.o.s. or (BIO)Medical waste, n.o.s., or Biomedical waste, n.o.s. or Medical waste, n.o.s., UN3291.'' This correction is a ''remove/add.''

• The proper shipping name for the entry ''Trimethyltrichlorosilane, UN1298'' is corrected to read ''Trimethylchlorosilane.'' This correction is a ''remove/add.''

• The information contained in the HMT for the following entries is being corrected by placing the information in the appropriate Columns of the:

○ ''Receptacles, small, containing gas or gas cartridges (non-flammable) without release device, not refillable and not exceeding 1 L capacity, UN2037.''

○ ''Receptacles, small, containing gas or gas cartridges (oxidizing) without release device, not refillable and not exceeding 1 L capacity, UN2037.''

Section 172.202

This section sets forth requirements for the description of hazardous materials on shipping papers. In paragraph (a)(4) of this section, we are correcting the last sentence to enclose the phrase ''for example, ''PG II'' '' in parentheses. The parentheses were inadvertently omitted in the January 14, 2009 final rule.

Section 172.322

This section specifies marking requirements for packaging used to transport marine pollutants. In paragraph (e)(2)(i), the number ''4'' is corrected to read ''3.9'' and in paragraph (e)(2)(ii), the number ''10'' is corrected to read ''9.8'' for consistency with similar marking and labeling size specification requirements in the HMR.

Section 172.407

This section establishes specifications for labels printed on or affixed to packaging. In the January 14, 2009 final rule, we adopted a new CARGO AIRCRAFT ONLY label in § 172.448 of the HMR. The new label contains text that differs from the previous label—specifically, the phrase ''CARGO AIRCRAFT ONLY'' replaces the word ''DANGER.'' When we adopted the new label, we failed to make conforming amendments to the label specifications in § 172.407 that reference text from the old label. In this final rule, we are amending paragraph (c)(2) of § 172.407 to correctly reference the phrase ''CARGO AIRCRAFT ONLY'' and amending the text size specifications to require the letters to measure at least 6.3 mm (0.25 inches) in height. The size requirement for the letters has been reduced to accommodate the greater amount of text that must be displayed on the label as shown in § 172.448.

Section 172.448

This section specifies the design of the ''CARGO AIRCRAFT ONLY'' label. For consistency with the revisions discussed above in § 172.407, we are amending paragraph (c) of this section to emphasize conformance with the label specifications for a ''CARGO AIRCRAFT ONLY'' label in § 172.407 in addition to the specifications outlined in paragraph (c) of this section.

Part 173

Section 173.4a

This section specifies conditions for exception from the HMR requirements for the transport of excepted quantities of hazardous materials. In this final rule, we are amending the language for inner packaging limits in paragraph (c)(1) to clarify the intent in the January 14, 2009 final rule that the provision applies to both primary and subsidiary hazards for Division 6.1 Packing Group I and II, solids and liquids. We are also correcting paragraphs (e)(3)(i) and (g)(2). In paragraph (e)(3)(i), we are removing the phrase ''[i]n such cases, and'' which is extraneous language that was inadvertently included with the paragraph and in paragraph (g)(2), we are correcting the word ''symbol'' to read ''marking'' to clarify that the size requirements are intended to apply to the size of the marking and not the size of the symbol within the marking.

Section 173.29

This section specifies requirements for the transport of empty packagings containing only the residue of a hazardous material. In the January 14, 2009 final rule, we revised § 173.115 with respect to classification of Division 2.2 material by adopting the gauge pressure criteria of 200 kPa (29.0 psig) but failed to make a conforming revision to the Division 2.2 classification criteria in this section. In this final rule, we are amending § 173.29(b)(2)(iv)(B) for consistency with the new classification criteria for Division 2.2 material in § 173.115.

Section 173.62

This section specifies authorized packaging for explosive materials. In this final rule, in paragraph (c)(5), we are amending Packing Instruction 114(b)(2) by correcting the words ''packagings'' and ''pre-vented'' to read ''packagings'' and ''prevented,'' respectively.

Section 173.115

This section establishes the classification criteria for Class 2, Division 2.1, 2.2, and 2.3 gases. In this final rule, for the Division 2.2 non-flammable, nonpoisonous gas criteria in paragraph (b)(1), we are correcting the gauge pressure number ''25.9'' to read ''29.0''. This correction reflects an error in conversion of the unit of measure and is not a revision to the classification criteria.

Section 173.159a

The section specifies the conditions for exception from the HMR requirements for the transport of non-spillable batteries. In this final rule, we are correcting the section heading ''Exceptions for Non-spillable batteries'' to read ''Exceptions for non-spillable batteries.'' In addition, in paragraph (b), we are correcting the word ''nonspillable'' in each place it appears to read ''non-spillable.''

Section 173.206

This section specifies the packaging requirements for chlorosilanes. In the January 14, 2009 final rule, we added this new packaging section to the HMR to harmonize with new packaging requirements for water-reactive chlorosilanes adopted in the Fifteenth revised edition of the UN Recommendations. In our effort to harmonize with the international standards, we inadvertently omitted the authorization to use cylinders for these materials. Cylinders were previously authorized for use in transport of these materials under §§ 173.201 and 173.202. In this final rule, we are correcting paragraph (c) by reinstating the authorization to use certain cylinders for transport of these materials. We note that aluminum cylinders should not be used for the transport of these materials due to safety concerns of incompatibility of aluminum and water-reactive chlorosilanes. We may adopt revisions to the packaging provisions prohibiting the use of aluminum cylinders for these materials in a future rulemaking.

Section 173.220

This section specifies the conditions for transportation of internal combustion engines, vehicles, and mechanical equipment and battery-powered vehicles and equipment. In the January 14, 2009 final rule, we clarified the provisions for the transport of batteries and battery-powered devices including the transport of vehicles and equipment powered by batteries. In paragraph (d), we included an incorrect reference to § 173.185 regarding an exception to the prohibition of lithium metal batteries aboard passenger-carrying aircraft. In this final rule, we are correcting paragraph (d) to reference the correct provision, specifically, § 172.102, Special Provision A101.

Section 173.230

This section specifies packaging requirements for fuel cell cartridges. Per the section II discussion of HMT Associates' appeal, in this final rule, we are correcting paragraphs (e)(2) and (f) in § 173.230 to clarify and align fully the fuel cell cartridge packaging requirements with the multimodal packing requirements as prescribed in the ICAO TI Packing Instruction 217 and UN Recommendations Packing Instruction P004.

Sections 173.306

This section specifies conditions for exception from the HMR requirements for transportation of limited quantities of compressed gases. In the January 14, 2009 final rule, we adopted provisions for the transportation of limited quantities of Division 2.2 (non-flammable) compressed gases in nonrefillable plastic receptacles packaged in a strong outside packaging. These provisions are set forth in conditions for shipment of these gases in specification 2S and non-DOT specification plastic containers (§ 173.306(a)(5)) and in a new specification 2S for the construction of these plastic containers (§ 178.33b). *See* 74 FR at 2265, 2268–69. These requirements are consistent with revisions adopted in the Fifteenth revised edition of the UN Recommendations (6.2.4.2.2) and the 2009–2010 edition of the ICAO TI (6;5.4.2.3). We concluded that these inner plastic containers provide a level of safety equivalent to other authorized packaging, and we could eliminate the need for issuance of a special permit to allow the use of plastic containers for transport of limited quantities of Division 2.2 gases with no subsidiary risk.

Inner metal containers authorized for transport of limited quantities of compressed gas have historically been subjected to a hot water bath after filling to ensure the containers are free of leaks prior to being offered for transportation. *See* § 173.306(a)(3)(v). Consistent with UN Recommendations and the ICAO TI, in the January 14, 2009 final rule, we adopted in § 173.306(a)(5)(v) a similar hot water bath test requirement for the specification 2S and non-DOT specification plastic containers. The hot water bath for plastic containers must be performed at temperatures and for a duration sufficient to achieve internal pressure requirements. These elevated temperatures may be destructive to the contents of containers or to the material of construction of plastic containers. Thus, the hot water bath test includes instruction for containers with contents sensitive to heat or containers made of plastic materials which soften at higher temperatures to be tested at a lower temperature. However, in adopting the hot water bath provisions, we inadvertently left out the language specific to plastic materials which soften at the test temperature. In this final rule, we are correcting paragraph (a)(5)(v) to include language that plastic materials which soften at the higher test temperature of the hot water bath must be tested at the lower temperature range of 20 °C (68 °F) to 30 °C (86 °F).

Additionally, as part of the conditions for the shipment of limited quantities of Division 2.2 (non-flammable) compressed gases in plastic containers, we intended to adopt test methods alternative to the hot water bath test in § 173.306, specifically, pressure and leakage tests subjected to each container prior to filling and a leakage test subjected to each container after filling. The provisions for alternative pressure and leakage tests to the hot water bath were incorrectly placed in § 178.33b–8, rather than in § 173.306 where they properly belong. In doing so, we inadvertently required manufacturers of the specification 2S plastic containers to perform the alternative pressure and leakage tests as part of their production run and then also required the filler to perform the hot water bath test. This misplacement of the pressure and leakage tests would put domestic manufacturers or fillers at a disadvantage as they are not afforded the opportunity to utilize these tests as an alternative to the hot water bath test as they would be if transporting under the ICAO TI or under other international regulations that have adopted these provisions based on the UN Recommendations. We believe this intent was understood by the public and the regulated community. Therefore, to correct this error, in this final rule, we are (1) removing the alternative pressure and leakage test method provisions currently found in § 178.33b–8(b); (2) adding these provisions to § 173.306 as a new paragraph (a)(5)(vi); and (3) redesignating current paragraph (a)(5)(vi) containing the packaging marking requirements as new paragraph (a)(5)(vii).

Part 175

Section 175.10

This section specifies conditions for exception from the HMR requirements for the transport of hazardous materials aboard passenger aircraft by passengers, crewmembers, and air operators. In the January 14, 2009 final rule, we revised paragraph (a)(18) to expand the types of fuel cell cartridges permitted in carry-on baggage. Fuel cell cartridges permitted for transport by passengers and crewmembers must continue to conform to the rigorous performance criteria outlined in this section. For consistency with the provisions for fuel cell cartridges in § 173.230, in this final rule, we are clarifying paragraph (a)(18) of this section to indicate that the maximum quantity of fuel for hydrogen in a metal hydride fuel cell cartridges is based on the water capacity of the fuel cell cartridges rather than the net quantity of fuel as is the case of all other types of fuels. Also, in this final rule, we are correcting a grammatical error in paragraph (a)(15)(iv)(B) by correcting

the ‘‘,’’ (comma) at the end of the subparagraph to read ‘‘;’’ (semicolon).

Part 178

Section 178.33b

In this final rule, we are correcting the section heading ‘‘Specification 2S; inner nonrefillable plastic receptacles [Reserved]’’ to read ‘‘Specification 2S; inner nonrefillable plastic receptacles.’’

Section 178.33b–7

This section specifies design qualification testing requirements for Specification 2S packaging. In this final rule, we are correcting the section heading ‘‘§ 178.33b–7 Design Qualification Test’’ to read ‘‘§ 178.33b–7 Design qualification test.’’ We are also correcting paragraph (a) to specify that the drop test requirements apply to each new design rather than each container. The current wording ‘‘container type’’ used in paragraph (a) comes from the British Standard BS 5597:1991 (paragraph 2.11) in which ‘‘type testing’’ is defined as testing to indicate whether an aerosol dispenser, made to a unique specification and design, meets the appropriate requirements of the standard. BS 5597:1991 was the basis for several special permits issued by PHMSA authorizing the manufacture and use of these containers prior to adoption of the provisions into the HMR. Design qualification testing, or ‘‘type testing,’’ is intended to be performed only on new designs and is repeated when the design features change in a meaningful way, such as when the container is manufactured with a new mold, or if the properties of the plastic material have changed. Therefore, in this final rule, we are clarifying paragraph (a) by correcting § 178.33b–7(a)(1) to require each new design be subjected to the drop test requirements. Also, in the January 14, 2009 final rule, in a response to comments, we agreed with a commenter that the drop test criteria should be amended to specify that a container should not be dropped on the valve. However, we inadvertently left this instruction out of the final rule. In this final rule, we are correcting § 178.33b–7(a)(1) by revising the language to specify the orientation of the containers during the drop test. Finally, we are adding a new paragraph (b) to this section to clarify when design qualification testing is required.

Section 178.33b–8

This section specifies production testing requirements for Specification 2S packaging. In this final rule, we are correcting the section heading ‘‘§ 178.33b–8 Production Tests’’ to read ‘‘§ 178.33b–8 Production tests’’ and correcting paragraph (b) by removing the pressure and leak test requirements as discussed in § 173.306 above.

Section 178.703

The section specifies the packaging marking requirements for IBCs. In the January 14, 2009 final rule, we included an additional marking requirement for IBCs to display a symbol specifying the maximum permitted stacking load applicable when an IBC is in use, with a transition date until January 1, 2011. In this final rule, we are correcting the language adopted in the January 14, 2009 final rule in § 178.703 by adding a new paragraph (b)(7) to specify that the symbol is in addition to the marking requirements already in place in paragraph (a)(1) and not a part of the that marking sequence. Additionally, we are clarifying that the marking of the figure ‘‘0’’ that is required as part of the marking sequence in § 178.703(a)(1) is not required in association with the symbol for IBCs not capable of being stacked.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule corrects several errors in the January 14, 2009 final rule.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This final rule corrects errors made during the development of the January 14, 2009 final rule and printing process and makes amendments to conform to amendments made in the January 14, 2009 final rule.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is a non-significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the January 14, 2009 final rule. The Regulatory Evaluation is available for review in the public docket for this rulemaking.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (‘‘Federalism’’), and the President’s memorandum on ‘‘Preemption’’ in published in the **Federal Register** on May 22, 2009 (74 FR 24693). This final rule preempts State, local and Indian Tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian Tribe requirements for certain subjects. The subjects are:

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

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

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

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

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

This final rule addresses covered subject items (1), (2), (3), and (5) above and preempts State, local, and Indian Tribe requirements not meeting the ‘‘substantively the same’’ standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2009. If the changes in this final rule are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, are at an economic disadvantage. These companies are forced to comply with a

dual system of regulations. The changes in this rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is April 5, 2010.

D. Executive Order 13175

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

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The corrections and revisions contained in this final rule will have little or no effect on the regulated industry. Based on the assessment in the regulatory evaluation, to the January 14, 2009 final rule, I hereby certify that, while this rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Flexibility analysis is available for review in the docket.

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

F. Paperwork Reduction Act

This final rule imposes no new information collection requirements.

G. Regulatory Identifier Number (RIN)

A regulation identifier number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. In the January 14, 2009 final rule, we developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude that there are no significant environmental impacts associated with this final rule. Consistency in the regulations for the transportation of hazardous materials aids in shippers' understanding of what is required and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. For interested parties, a detailed environmental assessment is included in the January 14, 2009 final rule which is available in the public docket.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html.*

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not exclude imports that meet this objective. Accordingly, this rulemaking is consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

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

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended by making the following amendments:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.7, in the paragraph (a)(3) table, the entry for ''International Civil Aviation Organization (ICAO)'' is revised to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
International Civil Aviation Organization (''ICAO''), 999 University Street, Montréal, Quebec H3C 5H7, Canada, 1–514–954–8219, *http://www.icao.int:*	
ICAO Technical Instructions available from: INTEREG, International Regulations, Publishing and Distribution Organization, P.O. Box 60105, Chicago, IL 60660.	
* * * * * * *	

* * * * *

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

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

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

■ 4. In § 172.101, paragraph (l)(3) is revised and the Hazardous Materials Table is amended by removing, adding and revising entries, in the appropriate alphabetical sequence, to read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

(l) * * *

(3) Cylinders used for chlorine (UN1017) with preprinted markings conforming to § 172.400a(a)(1)(ii) without the Division 5.1 subsidiary hazard number may continue to be used until January 1, 2011.

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	*			*	*	*	*		*	*			
	Regulated medical waste, n.o.s. *or* Clinical waste, unspecified, n.o.s. *or* (BIO)-Medical waste, n.o.s., *or* Biomedical waste, n.o.s. *or* Medical waste, n.o.s..	6.2	UN 3291	II	6.2	A13	134	197	197	No limit	No limit	B	40
	*			*	*	*	*		*	*			
	Trimethyltrichlorosilane	3	UN1298	II	3, 8	A3, A7, B77, N34, T10, TP2, TP7, TP13.	None	206	243	1 L	5 L	E	40
	*			*	*	*	*		*	*			
	[ADD]												
	*			*	*	*	*		*	*			
	Regulated medical waste, n.o.s. *or* Clinical waste, unspecified, n.o.s. *or* (BIO) Medical waste, n.o.s., *or* Biomedical waste, n.o.s. *or* Medical waste, n.o.s..	6.2	UN3291	II	6.2	A13	134	197	197	No limit	No limit	B	40
	*			*	*	*	*		*	*			
	Trimethylchlorosilane	3	UN1298	II	3, 8	A3, A7, B77, N34, T10, TP2, TP7, TP13.	None	206	243	1 L	5 L	E	40
	*			*	*	*	*		*	*			
	[REVISE]												
	*			*	*	*	*		*	*			
	Gasoline *includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	UN1203	II	3	144, 177, B1, B33, IB2, T4, TP1.	150	202	242	5 L	60 L	E	

*	*	*	*	*	*	*	*						
Receptacles, small, containing gas *or* gas cartridges*(non-flammable) without release device, not refillable and not exceeding 1 L capacity.*	2.2	UN2037		2.2		306	304	None	1 kg	15 kg	B	40
Receptacles, small, containing gas *or* gas cartridges *(oxidizing) without release device, not refillable and not exceeding 1 L capacity.*	2.2	UN2037		2.2, 5.1	A14	306	304	None	1 kg	15 kg	B	40
*	*	*	*	*	*	*						

* * * * *

■ 5. In § 172.202, in paragraph (a)(4), the last sentence is revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(4) * * * The packing group may be preceded by the letters ''PG'' (for example, ''PG II''); and

* * * * *

§ 172.322 [Amended]

■ 6. In § 172.322, in paragraph (e)(2)(i) introductory text, the number ''4'' is revised to read ''3.9'' and in paragraph (e)(2)(ii), the number ''10'' is revised to read ''9.8''.

■ 7. In § 172.407, paragraph (c)(2) is revised to read as follows:

§ 172.407 Label specifications.

* * * * *

(c) * * *

(2) The CARGO AIRCRAFT ONLY label must be a rectangle measuring at least 110 mm (4.3 inches) in height by 120 mm (4.7 inches) in width. The words ''CARGO AIRCRAFT ONLY'' must be shown in letters measuring at least 6.3 mm (0.25 inches) in height.

* * * * *

■ 8. In § 172.448, paragraph (c) is revised to read as follows:

§ 172.448 CARGO AIRCRAFT ONLY label.

* * * * *

(c) A CARGO AIRCRAFT ONLY label conforming to the specifications in this section and in § 172.407(c)(2) in effect on October 1, 2008, may be used until January 1, 2013.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 9. The authority citation for part 173 continues to read as follows:

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

■ 10. In § 173.4a, paragraphs (c)(1), (e)(3)(i), and (g)(2) are revised to read as follows:

§ 173.4a Excepted quantities.

* * * * *

(c) * * *

(1) For toxic material with a Division 6.1 primary or subsidiary hazard, PG I or II—

(i) 1 g (0.04 ounce) for solids; or

(ii) 1 mL (0.03 ounce) for liquids;

* * * * *

(e) * * *

(3) * * *

(i) Will absorb the entire contents of the inner packaging.

* * * * *

(g) * * *

(2) The marking must not be less than 100 mm (3.9 inches) by 100 mm (3.9 inches), and must be durable and clearly visible.

* * * * *

■ 11. In § 173.29, paragraph (b)(2)(iv)(B) is revised to read as follows:

§ 173.29 Empty packagings.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(B) A Division 2.2 non-flammable gas, other than ammonia, anhydrous, and with no subsidiary hazard, at a gauge pressure less than 200 kPa (29.0 psig); at 20 °C (68 °F); and

* * * * *

■ 12. In § 173.62, in the paragraph (c)(5) Table of Packing Methods, packing instruction entry 114(b) is revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

(5) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* *	* *	*	* *
114(b) This packing instruction applies to dry solids PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS:. 1. For UN 0077, 0132, 0234, 0235 and 0236, packagings must be lead free. 2. For UN 0160 and UN 0161, when metal drums (1A2 or 1B2) are used as the outer packaging, metal packagings must be so constructed that the risk of explosion, by reason of increased internal pressure from internal or external causes, is prevented. 3. For UN 0160, UN 0161, and UN 0508, inner packagings are not necessary if drums are used as the outer packaging. 4. For UN 0508 and UN 0509, metal packagings must not be used.	Bags ..... paper, kraft plastics textile, sift-proof woven plastics, sift-proof. Receptacles ..... fiberboard metal paper plastics woven plastics, sift-proof.	Not necessary	Boxes. natural wood, ordinary (4C1). natural wood, sift-proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). Drums. steel, removable head (1A2). aluminum, removable head (1B2). plywood (1D). fiber (1G). plastics, removable head (1H2).
* *	* *	*	* *

§ 173.115 [Amended]

■ 13. In § 173.115, in paragraph (b)(1), the number ''25.9'' is revised to read ''29.0''.

■ 14. In § 173.159a, the section heading is revised to read as set for below and in paragraph (b), the word ''nonspillable'' is revised to read ''non-spillable'' in each place it appears.

§ 173.159a Exceptions for non-spillable batteries.

* * * * *

■ 15. In § 173.206, paragraph (c) is revised to read as follows:

§ 173.206 Packaging requirements for chlorosilanes.

* * * * *

(c) Except for transportation by passenger aircraft, the following single packagings are authorized:

Steel drum: 1A1

Steel jerrican: 3A1

Plastic receptacle in steel drum: 6HA1
Cylinders (for liquids in PG I), specification or UN standard, as prescribed for any compressed gas, except Specification 3HT and those prescribed for acetylene
Cylinders (for liquids in PG II), specification, as prescribed for any compressed gas, except Specification 8 and 3HT cylinders.

■ 16. In § 173.220, in paragraph (d), the first sentence is revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment.

* * * * *

(d) *Lithium batteries.* Except as provided in § 172.102, Special Provision A101 of this subchapter, vehicles, engines and machinery powered by lithium metal batteries that are transported with these batteries installed are forbidden aboard passenger-carrying aircraft. * * *

* * * * *

■ 17. In § 173.230, paragraphs (e)(2)(i) and (ii) and (f)(2) through (4) are revised to read as follows:

§ 173.230 Fuel cell cartridges containing hazardous material.

* * * * *

(e) * * *

(2) * * *

(i) Fuel cell cartridges packed with equipment must be packed with cushioning material or divider(s) or inner packagings so that the fuel cell cartridges are protected against damage that may be caused by the shifting or placement of the equipment and cartridges within the packaging.

(ii) Fuel cell cartridges contained in equipment must be protected against short circuits and the entire fuel cell system must be protected from unintentional activation. The equipment must be securely cushioned in the outer packaging.

(f) * * *

(2) For fuel cell cartridges contained in equipment, fuel cell systems must not charge batteries during transport;

(3) For transportation aboard passenger aircraft, for fuel cell cartridges contained in equipment, each fuel cell system and fuel cell cartridge must conform to IEC PAS 62282–6–1 Ed. 1 (IBR, *see* § 171.7 of this subchapter) or a standard approved by the Associate Administrator;

(4) When packed with equipment, fuel cell cartridges must be packed in an intermediate packaging along with the equipment they are capable of powering, and the intermediate packagings packed in a strong outer packaging. The maximum number of fuel cell cartridges in the intermediate packaging may not be more than the number required to power the equipment, plus two spares;

* * * * *

■ 18. In § 173.306, paragraph (a)(5)(v) is revised, paragraph (a)(5)(vi) is redesignated as paragraph (a)(5)(vii), and new paragraph (a)(5)(vi) is added to read as follows:

§ 173.306 Limited quantities of compressed gases.

(a) * * *

(5) * * *

(v) Except as provided in paragraph (a)(5)(vi) of this section, each container must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F) or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). If the contents are sensitive to heat, or if the container is made of plastic material which softens at this test temperature, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2,000 must be tested at the higher temperature. No leakage or permanent deformation of a container may occur except that a plastic container may be deformed through softening provided that it does not leak.

(vi) As an alternative to the hot water bath test in paragraph (a)(5)(v) of this section, testing may be performed as follows:

(A) *Pressure and leak testing before filling.* Each empty container must be subjected to a pressure equal to or in excess of the maximum expected in the filled containers at 55 °C (131 °F) (or 50 °C (122 °F) if the liquid phase does not exceed 95 percent of the capacity of the container at 50 °C (122 °F). This must be at least two-thirds of the design pressure of the container. If any container shows evidence of leakage at a rate equal to or greater than 3.3×10^{-2} mbar·L/s at the test pressure, distortion or other defect, it must be rejected; and

(B) *Testing after filling.* Prior to filling, the filler must ensure that the crimping equipment is set appropriately and the specified propellant is used before filling the container. Once filled, each container must be weighed and leak tested. The leak detection equipment must be sufficiently sensitive to detect at least a leak rate of 2.0×10^{-3} mbar·L/s at 20 °C (68 °F). Any filled container which shows evidence of leakage, deformation, or excessive weight must be rejected.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

■ 19. The authority citation for part 175 continues to read as follows:

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

■ 20. In § 175.10, paragraphs (a)(15)(iv)(B) and (a)(18)(ii) are revised to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(15) * * *

(iv) * * *

(B) Is removed and placed in a strong, rigid packaging marked ''NONSPILLABLE BATTERY'' (unless fully enclosed in a rigid housing that is properly marked); or

* * * * *

(18) * * *

(ii) The maximum water capacity of a fuel cell cartridge for hydrogen in a metal hydride may not exceed 120 mL (4 fluid ounces). The maximum quantity of fuel in all other fuel cell cartridge types may not exceed:

(A) 200 mL (6.76 ounces) for liquids;

(B) 120 mL (4 fluid ounces) for liquefied gases in non-metallic fuel cell cartridges, or 200 mL (6.76 ounces) for liquefied gases in metal fuel cell cartridges; or

(C) 200 g (7 ounces) for solids.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 21. The authority citation for part 178 continues to read as follows:

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

■ 22. In § 178.33b, the section heading is revised to read as follows:

§ 178.33b Specification 2S; inner nonrefillable plastic receptacles.

* * * * *

■ 23. Section 178.33b–7 is revised to read as follows:

§ 178.33b–7 Design qualification test.

(a) *Drop testing.* (1) To ensure that creep does not affect the ability of the container to retain the contents, each new design must be drop tested as follows: Three groups of twenty-five filled containers must be dropped from 1.8 m (5.9 ft) on to a rigid, non-resilient, flat and horizontal surface. One group must be conditioned at 38 °C (100 °F)

for 26 weeks, the second group for 100 hours at 50 °C (122 °F) and the third group for 18 hours at 55 °C (131 °F), prior to performing the drop test. The closure, or sealing component of the container, must not be protected during the test. The orientation of the test container at drop must be statistically random, but direct impact on the valve or valve closure must be avoided.

(2) *Criteria for passing the drop test:* The containers must not break or leak.

(b) Design qualification testing must be completed if the design is manufactured with a new mold or if there is any change in the properties of the material of construction.

■ 24. In § 178.33b–8, the section heading is revised to read as follows and paragraph (b) is removed and reserved:

§ 178.33b–8 Production tests.

* * * * *

■ 25. In § 178.703, paragraph (a)(1)(vii) is revised and a new paragraph (b)(7) is added to read as follows:

§ 178.703 Marking of IBCs.

(a) * * *

(1) * * *

(vii) The stacking test load in kilograms (kg). For IBCs not designed for stacking, the figure ''0'' must be shown.

* * * * *

(b) * * *

(7) The symbol applicable to an IBC designed for stacking or not designed for stacking, as appropriate, must be marked on all IBCs manufactured, repaired or remanufactured after January 1, 2011 as follows:

(i)

(ii) Display the symbol in a durable and visible manner.

(iii) The symbol must not be less than 100 mm (3.9 inches) by 100 mm (3.9 inches).

(iv) For IBCs designed for stacking, the maximum permitted stacking load applicable when the IBC is in use must be displayed with the symbol. The mass in kilograms (kg) marked above the symbol must not exceed the load imposed during the design test, as indicated by the marking in paragraph (a)(1)(vii) of this section, divided by 1.8. The letters and numbers indicating the mass must be at least 12 mm (0.48 inches).

Issued in Washington, DC on December 17, 2009, under authority delegated in 49 CFR part 1.

M. Cynthia Douglass,

Acting Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. E9–30556 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 75, No. 1
Monday, January 4, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM412 Special Conditions No. 25–09–08–SC]

Special Conditions: Boeing Model 787–8 Airplane; Overhead Crew Rest Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features associated with installation of an overhead crew rest compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: We must receive your comments by February 18, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM412, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM412. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 28, 2003, The Boeing Commercial Airplane Group (hereafter referred to as ''Boeing'') applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The company applied for an extension of time for the type certificate on March 9, 2009, and was granted that extension on March 13, 2009. The Boeing Model 787–8 airplane will be an all-new, two-engine jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger count of 381 passengers.

Type Certification Basis

Under provisions of Title 14 Code of Federal Regulations (14 CFR) 21.17, Boeing must show that the Boeing Model 787–8 airplane (hereafter referred to as ''the 787'') meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, 25–120, 25–124, 25–125 and 25–128, except that § 25.1309 remains at Amendment 25–117 for cargo fire protection systems. If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

Crew rest compartments have been installed and certificated on several Boeing airplane models in locations as varied as the main passenger seating area, the overhead space above the main passenger cabin seating area, and below the passenger cabin seating area within the cargo compartment. In each case, the Administrator has determined that the applicable regulations (*i.e.,* 14 CFR part 25) did not provide all of the necessary requirements because each installation had unique features by virtue of its design, location, and use on the airplane. When the Administrator finds that the applicable airworthiness

regulations do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16. The special conditions contain safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Most recently, for the Boeing Model 777 series airplanes, the FAA has issued Special Conditions No. 25–230–SC, dated April 9, 2003, for overhead crew rest (OCR) compartments allowed to be occupied during flight, and Special Conditions No. 25–260–SC, dated April 14, 2004, for overhead flight crew rest (OFCR) compartments allowed to be occupied during taxi, takeoff, and landing (TT&L), as well as during flight.

The OCR compartment on the 787 identified by Boeing as an overhead flight attendant rest is located above the main passenger cabin, adjacent to Door 4, and will be accessed from the main deck by stairs through a vestibule. This OCR compartment will contain six private berths, an emergency hatch that opens directly into the main passenger cabin area, a smoke detection system, an oxygen system, and various occupant amenities. This OCR compartment will only be occupied by trained crew members in flight. It will not be occupied during taxi, takeoff, or landing.

This 787 OCR compartment is unique to part 25 because of its design, location, and use on the airplane. Because of the novel or unusual features associated with installation of this compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations.

Certification engineers evaluate such an installation with respect to the interior and assess it in accordance with the certification basis of the airplane. However, part 25 does not provide all of the requirements for crew rest compartments within the overhead area of the passenger compartment. These proposed special conditions do not negate the need to address other applicable part 25 regulations.

Operational Evaluations and Approval

These proposed special conditions outline requirements for OCR compartment design approvals administered by the FAA's Aircraft Certification Service. Prior to operational use of an OCR compartment, the FAA's Flight Standards Service must evaluate and approve the ''basic suitability'' of the compartment for crew occupation. Additionally, if an operator wishes to use an OCR compartment as ''sleeping quarters,'' the compartment must undergo an additional evaluation and approval (reference 14 CFR 121.485(a), 121.523(b), and 135.269(b)(5)). Compliance with these proposed special conditions does not ensure that the applicant has demonstrated compliance with the requirements of parts 121 or 135.

To obtain an operational evaluation, the type certificate holder must contact the appropriate aircraft evaluation group (AEG) in the Flight Standards Service and request a ''basic suitability'' evaluation or a ''sleeping quarters'' evaluation of its OCR compartment. The results of these evaluations should be documented in a 787 flight standardization board (FSB) report appendix. Individual operators may reference these standardized evaluations in discussions with their FAA principal operating inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OCR compartment configuration that affect crewmember emergency egress or any other procedures affecting safety of the occupying crewmembers or related emergency training will require re-evaluation and approval. The applicant for an OCR compartment design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new compartment evaluation is required. The results of a re-evaluation should also be documented in a 787 FSB report appendix.

Procedures must be developed to ensure that a crewmember entering the OCR compartment through the stairway/vestibule to fight a fire will examine the stairway/vestibule and the adjacent galley or lavatory areas (if installed) for the source of the fire before entering the remaining areas of the compartment. This is intended to ensure that the source of the fire is not between the crewmember and the entrance to the OCR compartment. If a fire source is not immediately evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the OCR compartment entrance first, then proceed to check areas in such a manner that the fire source, when found, will not be between the firefighter and his or her way to get out of the compartment. Procedures describing methods for searching the OCR compartment for fire source(s) must be transmitted to operators for incorporation into their training programs and appropriate operational manuals.

Discussion of Proposed Special Conditions

These proposed special conditions would initially apply to an OCR compartment installed adjacent to the Door 4 exits on the 787. These proposed special conditions would supplement 14 CFR part 25. Except as noted below, these proposed special conditions for the 787 closely resemble Boeing 777 Special Conditions No. 25–230–SC.

Proposed Special Conditions No. 4 and 14 contain requirements for the exit signs that must be provided in the OCR compartment. Symbols that satisfy the equivalent level of safety finding established for the 787 may be used in lieu of the text required by § 25.812(b)(1)(i). The FAA expects that crewmembers will learn the meaning of any symbolic exit sign as a part of their training in evacuation procedures.

Proposed Special Condition No. 13 contains requirements for supplemental oxygen systems. Special Conditions No. 25–260–SC, for the overhead flightcrew rest compartments, required that each berth be provided with two oxygen masks. This was intended to address the case where a person not in a berth was moving around in the crew rest compartment and needed quick access to the oxygen. For the designs used in the model 777, this requirement was sufficient. However, for the 787, the requirement to have two masks per berth may not always meet the objective of having masks available to persons who are in transition within the compartment. Therefore, the wording of this proposed special condition has been modified to better state the objective rather than specify that two masks be provided per berth. In addition, the requirement to have adequate illumination to retrieve the mask, while implied previously, is made explicit in this proposal.

Proposed Special Condition No. 17 contains the requirement for materials used in the construction of the OCR compartment and states that § 25.853 as amended by Amendment 25–116 is the appropriate regulation. Amendment 25–116 is the latest amendment level for § 25.853.

Compliance with these proposed special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that the installation of OCR compartments leaves a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the pressurized compartment loads requirements of § 25.365(e), (f), and (g) for the OCR compartment, as well as for

any other airplane compartments whose decompression characteristics are affected by the installation of an OCR compartment. Compliance with § 25.813 emergency exit access requirements must be demonstrated for all phases of flight during which occupants will be present.

Section 25.813(e) prohibits installation of interior doors between passenger compartments, but the FAA has historically found crew rest doors to be acceptable, because crew rests are not passenger compartments. Proposed Special Conditions No. 1 and 14 provide requirements for crew rest doors which are considered to provide an appropriate level of safety to OCR compartment occupants.

Sections 25.1443, 25.1445, and 25.1447 contain oxygen requirements for flight crew, passengers, and cabin attendants. Crewmembers occupying the OCR compartment are not on duty, and therefore are considered passengers in determining compliance with these oxygen regulations.

Applicability

As discussed above, these proposed special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the 787. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 787–8 airplanes with an overhead crew rest (OCR) compartment installed above the main passenger cabin adjacent to an exit door.

1. Occupancy of the OCR compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the OCR compartment. Maximum occupancy in the OCR compartment is six.

(a) There must be appropriate placards, inside and outside each entrance to the OCR compartment, to indicate:

(1) The maximum number of occupants allowed.

(2) That occupancy is restricted to crewmembers who are trained in the evacuation procedures for the OCR compartment.

(3) That occupancy is prohibited during taxi, take-off, and landing.

(4) That smoking is prohibited in the OCR compartment.

(5) That stowage in the OCR compartment area is limited to crew personal luggage. The stowage of cargo or passenger baggage is not allowed.

(b) There must be at least one ashtray on the inside and one ashtray on the outside of any entrance to the overhead crew rest compartment.

(c) For times when there is no flight attendant present in the area around the door to the OCR compartment, and also in the event of an emergency, there must be a means to prevent passengers from entering the OCR compartment.

(d) There must be a means for any door installed between the OCR compartment and the passenger cabin to be quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the OCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

(f) The means of opening doors and hatches to the OCR compartment must be simple and obvious. In addition, doors or hatches that separate the overhead crew rest compartment from the main deck must not adversely affect evacuation of occupants on the main deck (slowing evacuation by encroaching into aisles, for example) or cause injury to those occupants during opening or while opened.

2. There must be at least two emergency evacuation routes which could be used by each occupant of the OCR compartment to rapidly evacuate to the main cabin. These evacuation routes must be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the OCR compartment to minimize the possibility of an event either inside or outside of the crew rest compartment rendering both routes inoperative.

Compliance with requirements of Proposed Special Condition No. 2(a) may be shown by inspection or by analysis. Regardless of which method is used, the maximum acceptable distance between crew rest compartment outlets is 60 feet.

Compliance by Inspection

Inspection may be used to show compliance with proposed Special Condition No. 2(a). An inspection finding that an OCR compartment has evacuation routes located so that each occupant of the seats and berths has an unobstructed route to at least one of the crew rest compartment outlets, regardless of the location of a fire, would be reason for a finding of compliance. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, crew rest compartment outlets that are located at absolute opposite ends (i.e., adjacent to opposite end walls) of the OCR compartment would require no further review or analysis with regard to exit separation.

Compliance by Analysis

Analysis must show that the OCR compartment configuration and interior features allow all occupants of the OCR compartment to escape the compartment in the event of a hazard inside or outside of the compartment.

Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the OCR compartment, considered separately, and the design elements used to reduce the available fuel for the fire.

(2) Design elements used to reduce fire ignition sources in the OCR compartment.

(3) Distribution and quantity of emergency equipment within the OCR compartment.

(4) Structural failure or deformation of components that could block access to the available evacuation routes (*e.g.,* seats, folding berths, contents of stowage compartments, *etc.*).

(5) An incapacitated person blocking the evacuation routes.

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. Possibilities for design components affecting evacuation that should be considered include, but are not limited to, seat back break over, rigid structure that reduces access from one part of the compartment to another,

and items known to be the cause of potential hazards. Factors that also should be considered are availability of emergency equipment to address fire hazards, availability of communications equipment, supplemental restraint devices to retain items of mass that, if broken loose, could hinder evacuation, and load path isolation between components containing evacuation routes.

Analysis of fire threats should be used in determining placement of required fire extinguishers and protective breathing equipment (PBE). This analysis should consider the possibility of fire in any location in the OCR compartment. The location and quantity of PBE equipment and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the OCR compartment.

The intent of this proposed special condition is to provide sufficient exit route separation. Therefore the exit separation analysis described above should not be used to approve crew rest compartment outlets that have less physical separation (measured between the centroid of each exit opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For OCR compartments with one outlet located near the forward or aft end of the compartment (as measured by having the centroid of the exit opening within 20 percent of the forward or aft end of the total overhead crew rest compartment length) the outlet separation from one outlet to the other should not be less than 50 percent of the total OCR compartment length.

For OCR compartments with neither required crew rest compartment outlet located near the forward or aft end of the compartment (as measured by not having the centroid of either outlet opening within 20 percent of the forward or aft end of the total OCR compartment length) the outlet separation from one outlet to the other should not be less than 30 percent of the total OCR compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the crew rest compartment outlets. One of the two OCR evacuation routes should not be located where, during times when occupancy is allowed, normal movement by passengers occurs (i.e., main aisle, cross aisle or galley complex, for example) that would impede egress from the OCR compartment. If an evacuation route is in an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants of the OCR compartment from head injury. Use of evacuation routes must not be dependent on any powered device. If a crew rest compartment outlet is over an area where there are passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the process of evacuating an incapacitated person(s). If such an evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including procedures for emergency evacuation of an incapacitated occupant from the OCR compartment, must be established. The applicant must transmit all of these procedures to the operator for incorporation into its training programs and appropriate operational manuals.

(d) There must be a limitation in the airplane flight manual or other suitable means to require that crewmembers be trained in use of the OCR evacuation routes.

3. There must be a means of evacuating an incapacitated person (representative of a ninety-fifth percentile male) from the OCR compartment to the passenger cabin floor.

(a) Such an evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the OCR compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes with stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OCR compartment, or to the first landing, whichever is lower.

4. The following signs and placards must be provided in the OCR compartment, and they must meet the following criteria:

(a) At least one exit sign, located near each exit, meeting the emergency lighting requirements of § 25.812(b)(1)(i). One allowable exception would be a sign with reduced background area of no less than 5.3 square inches (excluding the letters), provided that it is installed so that the material surrounding the exit sign is light in color (e.g., white, cream, light beige, for example). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch-wide background border around the letters would also be acceptable. Another allowable exception is a sign with a symbol that the FAA has determined to be equivalent for use as an exit sign in an OCR compartment.

(b) An appropriate placard located near each exit defining the location of and operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the aircraft's main power system, or of the normal OCR compartment lighting system, for emergency illumination to be automatically provided for the OCR compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient to allow occupants of the OCR compartment to locate and move to the main passenger cabin floor by means of each evacuation route.

(d) The illumination level must be sufficient, with the privacy curtains in the closed position, for each occupant of the crew rest compartment to locate a deployed oxygen mask.

6. There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the OCR compartment. There must also be two-way communications between occupants of the OCR compartment and each flight attendant station in the passenger cabin required per § 25.1423(g) to have a public address system microphone . In addition, the public address system must include provisions to provide only the relevant information to the crewmembers in the OCR compartment (for example fire in flight, aircraft depressurization, preparation of the

compartment occupants for landing, *etc.*).

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the overhead crew rest OCR compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units, for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the OCR compartment, to indicate when seat belts should be fastened. If there are no seats in the OCR compartment, at least one means must be provided to cover anticipated turbulence (e.g., sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts be fastened when occupied. If compliance with any of the other requirements of these proposed special conditions is predicated on specific head location, there must be a placard identifying that head position.

9. In lieu of the requirements specified in § 25.1439(a) pertaining to isolated compartments, and to provide a level of safety equivalent to that provided to occupants of an isolated galley, the following equipment must be provided in the OCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

(b) Two PBE devices suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater. All PBE devices must be approved to Technical Standard Order (TSO)–C116 or equivalent.

(c) One flashlight.

Note: Additional PBE devices and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Proposed Special Condition No. 9, may be required as a result of the egress analysis accomplished to satisfy Proposed Special Condition No. 2(a).

10. A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the OCR compartment, including those areas partitioned by curtains or doors. Flight tests must be conducted to show compliance with this requirement. If a fire occurs, each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire.

(b) An aural warning in the OCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The OCR compartment must be designed so that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, don the firefighting equipment, and gain access to the OCR compartment must not exceed the time it takes for the compartment to become filled with smoke, making it difficult to locate the fire source. Approved procedures describing methods for searching the OCR for fire sources(s) must be established. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the OCR compartment from entering any other compartment occupied by crewmembers or passengers. The effectiveness of this means must include the time periods during evacuation of the OCR compartment and, if applicable, the time during which crewmembers are accessing the OCR compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers when the access to the OCR compartment is opened, during an emergency evacuation, must dissipate within five minutes after the access to the OCR compartment is closed.

(a) Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during access to the OCR compartment to manually fight a fire. The amount of smoke entrained by a firefighter exiting the OCR compartment through the access is not considered hazardous. During the one-minute smoke detection time, penetration of a small quantity of smoke from the OCR compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

(b) There must be a provision in the firefighting procedures to ensure that all door(s) and hatch(es) at the crew rest compartment outlets are closed after evacuation of the compartment and during firefighting to minimize smoke and extinguishing agent entering other occupiable compartments.

(c) If a built-in fire extinguishing system is to be used instead of manual firefighting, the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress a fire considering the fire threat, the volume of the compartment, and the ventilation rate.

(1) The system must have sufficient extinguishing agent to provide an initial knockdown and suppression environment per the minimum performance standards that have been established for the agent being used. In addition, certification flight testing will verify the acceptable duration that the suppression environment can be maintained.

(2) If the capacity of the extinguishing system does not provide effective fire suppression that will last for the duration of flight from the farthest point in route to the nearest suitable landing site expected in service, an additional manual firefighting procedure must be established. For the built-in extinguishing system, the time duration for effective fire suppression must be established and documented in the firefighting procedures in the airplane flight manual. If the duration of time for demonstrated effective fire suppression provided by the built-in extinguishing agent will be exceeded, the firefighting procedures must instruct the crew to:

(i) Enter the OCR compartment at the time that demonstrated fire suppression effectiveness will be exceeded.

(ii) Check for and extinguish any residual fire.

(iii) Confirm that the fire is out.

(b) For a manual hand-held bottle extinguishing system (designed as the sole means to fight a fire or to supplement a built-in extinguishing system of limited suppression duration) for the OCR:

(1) There must be a limitation in the airplane flight manual or other suitable means requiring that crewmembers be trained in the firefighting procedures.

(2) The compartment design must allow crewmembers equipped for

firefighting to have unrestricted access to all parts of the compartment.

(3) The time for a crewmember on the main deck to react to the fire alarm, don the firefighting equipment, and gain access to the OCR compartment must not exceed the time it would take for the compartment to become filled with smoke, thus making it difficult to locate the fire source.

13. There must be a supplemental oxygen system within the crew rest compartment as follows:

(a) There must be at least one mask for each seat and berth in the crew rest compartment.

(b) If a destination area (such as a changing area) is provided in the OCR compartment, there must be an oxygen mask readily available for each occupant who can reasonably be expected to be in the destination area (with the maximum number of required masks within the destination area being limited to the placarded maximum occupancy of the crew rest).

(c) There must also be an oxygen mask readily accessible to each occupant who can reasonably be expected to be moving from the main cabin into the OCR compartment, moving around within the OCR compartment, or moving from the OCR compartment to the main cabin.

(d) The system must provide an aural and visual alert to warn occupants of the OCR compartment to don oxygen masks in the event of decompression. The aural and visual alerts must activate concurrently with deployment of the oxygen masks in the passenger cabin. To compensate for sleeping occupants, the aural alert must be heard in each section of the OCR compartment and must sound continuously for a minimum of five minutes or until a reset switch within the OCR compartment is activated. A visual alert that informs occupants that they must don an oxygen mask must be visible in each section.

(e) There must also be a means by which oxygen masks can be manually deployed from the flight deck.

(f) Approved procedures must be established for OCR occupants in the event of decompression. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(g) The supplemental oxygen system for the OCR compartment must meet the same 14 CFR part 25 regulations as the supplemental oxygen system for the passenger cabin occupants except for the 10 percent additional masks requirement of 14 CFR 25.1447(c)(1).

(h) The illumination level of the normal OCR compartment lighting system must automatically be sufficient for each occupant of the compartment to locate a deployed oxygen mask.

14. The following requirements apply to OCR compartments that are divided into several sections by the installation of curtains or partitions:

(a) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OCR compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(b) For each section of the OCR compartment created by the installation of a curtain, the following requirements of these proposed special conditions must be met with the curtain open or closed:

(1) No smoking placard requirement (Proposed Special Condition No. 1).

(2) Emergency illumination requirement (Proposed Special Condition No. 5).

(3) Emergency alarm system requirement (Proposed Special Condition No. 7).

(4) Seat belt fasten signal or return to seat signal as applicable requirement (Proposed Special Condition No. 8).

(5) Smoke or fire detection system requirement (Proposed Special Condition No. 10).

(6) Oxygen system requirement (Proposed Special Condition No. 13).

(c) Overhead crew rest compartments that are visually divided to the extent that evacuation could be affected must have exit signs directing occupants to the primary stairway outlet. The exit signs must be provided in each separate section of the OCR compartment, except for curtained bunks, and must meet requirements of § 25.812(b)(1)(i). An exit sign with reduced background area or a symbolic exit sign as described in Proposed Special Condition No. 4(a) may be used to meet this requirement.

(d) For sections within an OCR compartment created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these proposed special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, the applicant must show that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for a short time duration, such as a changing area or lavatory, is not required, but removal of an incapacitated occupant from within such a small room must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) In each section there must be exit signs meeting requirements of § 25.812(b)(1)(i), or shown to have an equivalent level of safety, that direct occupants to the primary stairway exit. An exit sign with reduced background area or a symbolic exit sign as described in Proposed Special Condition No. 4(a) may be used to meet this requirement.

(e) For each smaller section within the main OCR compartment created by the installation of a partition with a door, the following requirements of these proposed special conditions must be met with the door open or closed:

(1) No smoking placards requirement (Proposed Special Condition No. 1).

(2) Emergency illumination requirement (Proposed Special Condition No. 5).

(3) Two-way voice communication requirement (Proposed Special Condition No. 6).

(4) Emergency alarm system requirement (Proposed Special Condition No. 7).

(5) Seat belt fasten signal or return to seat signal as applicable requirement (Proposed Special Condition No. 8).

(6) Emergency firefighting and protective equipment requirement (Proposed Special Condition No. 9).

(7) Smoke or fire detection system requirement (Proposed Special Condition No. 10).

(8) Oxygen system requirement (Proposed Special Condition No. 13).

15. The requirements for two-way voice communication with the flight deck and provisions for emergency firefighting and protective equipment do not apply to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. If a waste disposal receptacle is fitted in the OCR compartment, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with flammability requirements of § 25.853(a) as amended by Amendment 25–116. Mattresses must comply with the

flammability requirements of § 25.853(c) as amended by Amendment 25–116.

18. The addition of a lavatory within the OCR compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Proposed Special Condition No. 10 for smoke detection.

19. Each stowage compartment in the OCR compartment must be completely enclosed. All enclosed stowage compartments within the OCR compartment that are not limited to stowage of emergency equipment or airplane-supplied equipment (i.e., bedding) must meet the design criteria given in the table below. Enclosed stowage compartments greater than 200 ft^3 in interior volume are not addressed by this proposed special condition. The in-flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

DESIGN CRITERIA FOR ENCLOSED STOWAGE COMPARTMENTS NOT LIMITED TO STOWAGE OF EMERGENCY OR AIRPLANE-SUPPLIED EQUIPMENT

Fire protection features	Applicability of fire protection requirements by interior volume		
	Less than 25 cubic feet	25 Cubic feet to less than 57 cubic feet	57 Cubic feet to 200 cubic feet
Compliant Materials of Construction[1]	Yes	Yes	Yes.
Smoke or Fire Detectors[2]	No	Yes	Yes.
Liner[3]	No	Conditional	Yes.
Fire Location Detector[4]	No	Yes	Yes.

[1] Compliant Materials of Construction

The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.,* 14 CFR part 25 Appendix F, parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft.^{3} in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] Smoke or Fire Detectors

Enclosed stowage compartments equal to or exceeding 25 ft.^{3} in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire.

(b) An aural warning in the overhead crew rest compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] Liner

If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (*i.e.,* § 25.855 at Amendment 25–116, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft.^{3} but less than 57 ft.^{3} in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft.^{3} in interior volume but less than or equal to 200 ft.^{3}, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] Fire Location Detector

If an OCR compartment has enclosed stowage compartments exceeding 25 ft.^{3} interior volume that are located separately from the other stowage compartments (located, for example, away from one central location, such as the entry to the OCR compartment or a common area within the OCR compartment, where the other stowage compartments are), that OCR compartment would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington, on December 28, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31117 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM411 Special Conditions No. 25–09–07–SC]

Special Conditions: Boeing Model 787–8 Airplane; Overhead Flightcrew Rest Compartment Occupiable During Taxi, Take-Off, and Landing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features associated with an overhead flightcrew rest (OFCR) compartment, which is proposed to be occupiable during taxi, take-off, and landing (TT&L). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: We must receive your comments by February 18, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM411, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM411. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 28, 2003, The Boeing Commercial Airplane Group (hereafter referred to as ''Boeing'') applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The company applied for an extension of time for the type certificate on March 9, 2009, and was granted that extension on March 13, 2009. The Boeing Model 787–8 airplane will be an all-new, two-engine jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger count of 381 passengers.

Type Certification Basis

Under provisions of Title 14 Code of Federal Regulations (14 CFR) 21.17, Boeing must show that the Boeing Model 787–8 airplane (hereafter referred to as ''the 787'') meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, 25–120, 25–124, 25–125 and 25–128, except that § 25.1309 remains at Amendment 25–117 for cargo fire protection systems. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

Crew rest compartments have been installed and certificated on several Boeing airplane models in locations as varied as the main passenger seating area, the overhead space above the main passenger cabin seating area, and below the passenger cabin seating area within the cargo compartment. In each case, the Administrator has determined that the applicable regulations (*i.e.,* 14 CFR part 25) did not provide all of the necessary requirements because each installation had unique features by virtue of its design, location, and use on the airplane. When the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16. The proposed special conditions contain safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Most recently, for the Boeing Model 777 series airplanes, the FAA has issued Special Conditions No. 25–230–SC, dated April 9, 2003, for overhead crew rest compartments allowed to be occupied during flight, and Special Conditions No. 25–260–SC, dated April 14, 2004, for overhead flightcrew rest (OFCR) compartments allowed to be occupied during TT&L, as well as during flight.

For the 787, an OFCR compartment is located in the overhead space above the main passenger cabin seating area immediately aft of the first pair of main deck emergency exits (Door 1). This compartment includes two private berths and up to two seats. Occupancy of the compartment will be limited to a maximum of four trained crewmembers during flight and two trained flight crewmembers, one in each seat, during TT&L. The compartment will be accessed from the main deck by stairs through a vestibule. In addition, a secondary evacuation route, which opens directly into the main passenger seating area, will be available as an alternate for evacuating occupants of the compartment. A smoke detection system and an oxygen system will be provided in the compartment. Other optional features, such as a sink with cold drink stowage or a lavatory, may be provided as well.

This OFCR compartment is unique to part 25 because of its design, location, and use on the airplane. It is also unique because it is in the overhead area of the passenger compartment and is proposed to be occupied by trained flightcrew during TT&L.

Because of the novel or unusual features associated with installation of this OFCR compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations. These proposed special conditions do not negate the need to address other applicable part 25 regulations.

Consideration of a Requirement for an External Exit

For Boeing Model 777 Special Conditions No. 25–260–SC, the FAA considered whether or not a special condition should require that the OFCR compartment have an external exit leading directly outside the airplane. The Air Line Pilots Association, International (ALPA), and International Federation of Air Line Pilots (IFALPA) reviewed the design of the 777 OFCR compartment and informed the FAA that in their opinion an external exit was not needed because two independent, internal evacuation routes were provided. That input, and the fact that flight crewmembers would be the only occupants of the compartment during TT&L, supported the FAA in determining that a special condition requiring an external exit was not required. The FAA considers that the following, in addition to Special Conditions No. 25–260–SC, provide a

level of safety equivalent to that established by part 25 for main deck occupants:

1. The distances along the evacuation routes from the seats in the OFCR compartment to the Door 1 exits on the main deck are significantly shorter than the maximum distance a seated passenger on the main deck would need to travel to reach an exit.

2. Occupancy during TT&L will be limited to two flight crewmembers trained in the evacuation, fire fighting, and depressurization procedures of the OFCR compartment. An airplane flight manual limitation must be established to restrict occupancy to only persons the pilot in command has determined are able to use both evacuation routes rapidly. The ability of such persons to fit through the escape hatch must be considered in this determination.

For the reasons noted above, the FAA does not believe that this proposed special condition should require that the 787 OFCR compartment have an external exit.

Operational Evaluations and Approval

These proposed special conditions outline requirements for OFCR compartment design approvals administered by the FAA's Aircraft Certification Service. Prior to operational use of an OFCR compartment, the FAA's Flight Standards Service must evaluate and approve the ''basic suitability'' of the compartment for crew occupation. Additionally, if an operator wishes to use an OFCR compartment as ''sleeping quarters,'' the compartment must undergo an additional evaluation and approval (reference 14 CFR 121.485(a), 121.523(b), and 135.269(b)(5)). Compliance with these proposed special conditions does not ensure that the applicant has demonstrated compliance with the requirements of parts 121 or 135.

To obtain an operational evaluation, the type certificate holder must contact the appropriate aircraft evaluation group (AEG) in the Flight Standards Service and request a ''basic suitability'' evaluation or a ''sleeping quarters'' evaluation of its OFCR compartment. The results of these evaluations should be documented in a 787 flight standardization board (FSB) report appendix. Individual operators may reference these standardized evaluations in discussions with their FAA principal operating inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OFCR compartment configuration that affect crewmember emergency egress or any other procedures affecting safety of the occupying crewmembers or related emergency training will require re-evaluation and approval. The applicant for an OFCR compartment design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new compartment evaluation is required. The results of a re-evaluation should also be documented in a 787 FSB report appendix.

Procedures must be developed to ensure that a crewmember entering the OFCR compartment through the vestibule to fight a fire will examine the vestibule and the adjacent galley or lavatory areas (if installed) for the source of the fire before entering the remaining areas of the compartment. This is intended to ensure that the source of the fire is not between the crewmember and the entrance to the OFCR compartment. If a fire source is not immediately evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the OFCR compartment entrance first, then proceed to check areas in such a manner that the fire source, when found, will not be between the firefighter and his or her way to get out of the compartment. Procedures describing methods for searching the OFCR compartment for fire source(s) must be transmitted to operators for incorporation into their training programs and appropriate operational manuals.

Discussion of Rescue Crew Training Materials

Installation of an overhead crew rest compartment that can be occupied during TT&L by flight crew is unusual. Appropriate information must be provided to airport fire rescue personnel so that they understand that this remote compartment may be occupied during an emergency landing. The applicant must provide rescue crew training materials to the FAA Airports Division, Safety and Standards Branch (ANM–620) to address this issue. The FAA Airports Division, Safety and Standards Branch, will ensure that these materials are distributed to appropriate airports, domestic and foreign. A special condition is not considered appropriate to address this issue.

Discussion of Proposed Special Conditions

These proposed special conditions would apply to OFCR compartments that are occupiable during TT&L and are installed immediately aft of the Door 1 exits on the 787. These proposed special conditions would supplement 14 CFR part 25. Except as noted below, these proposed special conditions for the 787 will be identical to Boeing Model 777 Special Conditions No. 25–260–SC.

Proposed Special Conditions No. 6 and 16 contain requirements for the exit signs that must be provided in the OFCR compartment. As stated in the proposed special conditions, symbol signs in OFCR compartments that satisfy the equivalent level of safety finding established for the 787 may be used in lieu of the text signs required by § 25.812(b)(1)(i).

Proposed Special Condition No. 15 contains requirements for supplemental oxygen systems. Special Conditions No. 25–260–SC required that each berth be provided with two oxygen masks. This was intended to address the case where a person not in a berth was moving around within the crew rest compartment and needed quick access to the oxygen. For the designs used in the model 777, this requirement was sufficient. However, for the 787, the requirement to have two masks per berth may not always meet the objective of having masks available to persons who are in transition within the compartment. Therefore, the wording of this proposed special condition has been modified to better state the objective rather than specify that two masks be provided per berth. In addition, the requirement to have adequate illumination to retrieve the mask, while implied previously, is made explicit in this proposal.

Proposed Special Condition No. 18 contains the requirements for materials used in the construction of the OFCR compartment. Special Conditions No. 25–260–SC stated that § 25.853 as amended by Amendment 25–83 is the appropriate regulation. Section 25.853 has since been further amended, and these proposed special conditions reference the latest amendment level for § 25.853 (Amendment 25–116).

Compliance with these proposed special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that installation of OFCR compartments leaves a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the pressurized compartment loads requirements of § 25.365(e), (f), and (g) for the OFCR compartment, as well as for any other airplane compartments whose decompression characteristics are affected by the installation of an OFCR compartment. Compliance with § 25.813 emergency exit access requirements must be demonstrated for

all phases of flight during which occupants will be present.

The proposed configuration includes a seat installed adjacent to the OFCR compartment exit which will be occupiable during TT&L. It should be noted that the emergency landing conditions requirements of §§ 25.561(d) and 25.562(c)(8) are applicable to this configuration. Hence, deformations resulting from required static and dynamic structural tests must not impede rapid evacuation of the OFCR compartment occupants. Seat deformations must not prevent opening of the secondary escape hatch or rapid evacuation through the secondary escape route.

Section 25.785(h)(2) mandates that the flight attendant seats required by the operating rules be located in a position that provides a direct view of the cabin area for which the flight attendant is responsible. Since the OFCR compartment will be occupied only by trained crewmembers, the FAA does not consider this requirement applicable to the seating area in the compartment.

Section 25.787(a) requires each stowage compartment in the passenger cabin, except for underseat and overhead compartments for passenger convenience, to be completely enclosed. This requirement does not apply to the flight deck, because flight crewmembers must be able to quickly access items to better perform their duties. Flight crewmembers occupying the OFCR compartment will not be performing flight deck duties however. Therefore, the FAA considers that stowage compartments in the OFCR compartment, except for underseat compartments for occupant convenience, should be completely enclosed. This will provide occupants of the OFCR compartment a similar level of safety to that provided to passengers on the main deck. Proposed Special Condition No. 20 contains this requirement.

Section 25.811(c) requires that means be provided to assist occupants in locating the exits in conditions of dense smoke. Section 25.812(e) requires floor proximity emergency escape path marking to provide guidance for passengers when all sources of illumination above 4 feet from the cabin aisle floor are totally obscured. The FAA considers that the current OFCR compartment design is sufficient in regard to these regulations. The two OFCR compartment seats are only a couple of steps away from the stairway and once a trained flight crewmember is at the top of the stairway, the stairway itself will guide him/her to the main deck. Once the crewmember is on the main deck, floor proximity lighting and exit marker signs, which are less than 4 feet above the floor, are provided.

Section 25.813(e) prohibits installation of interior doors between passenger compartments, but the FAA has historically found crew rest doors to be acceptable, because crew rests are not passenger compartments. Proposed Special Conditions No. 2 and 16 provide requirements for crew rest doors which are considered to provide an appropriate level of safety to OFCR compartment occupants.

Sections 25.1443, 25.1445, and 25.1447 contain oxygen requirements for flight crew, passengers, and cabin attendants. Flight crewmembers occupying the OFCR compartment are not on duty, and therefore are considered passengers in determining compliance with these oxygen regulations.

Applicability

As discussed above, these proposed special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the 787. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 787–8 airplanes with an overhead flightcrew rest (OFCR) compartment installed adjacent to or immediately aft of the first pair of exits (Door 1).

1. During flight, occupancy of the OFCR compartment is limited to the total number of bunks and seats installed in the compartment that are approved to the maximum flight loading conditions. During taxi, takeoff, and landing (TT&L), occupancy of the OFCR compartment is limited to the total number of installed seats approved for the flight and ground load conditions and emergency landing conditions. The OFCR compartment is limited to a maximum of four crewmembers during flight and two flight crewmembers during TT&L.

(a) There must be appropriate placards, inside and outside each entrance to the OFCR compartment, to indicate:

(1) The maximum number of crewmembers allowed during flight and the maximum number of flight crewmembers allowed during TT&L.

(2) That occupancy is restricted to crewmembers who the pilot in command has determined are trained in the emergency procedures for the OFCR compartment and able to rapidly use the evacuation routes.

(3) That smoking is prohibited in the OFCR compartment.

(4) That stowage in the OFCR compartment area is limited to crew personal luggage. The stowage of cargo or passenger baggage is not allowed.

(b) There must be at least one ashtray on the inside and one ashtray on the outside of any entrance to the OFCR compartment.

(c) A limitation in the airplane flight manual must be established to restrict occupancy to crewmembers who the pilot in command has determined are trained in the emergency procedures for the OFCR compartment and are able to rapidly use the evacuation routes of the OFCR compartment.

2. The following requirements are applicable to OFCR compartment door(s):

(a) There must be a means for any door installed between the OFCR compartment and the passenger cabin to be quickly opened from inside the OFCR compartment, even when crowding from an emergency evacuation occurs at each side of the door.

(b) Doors installed across emergency egress routes must have a means to latch them in the open position. The latching means must be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, listed in § 25.561(b).

(c) A placard must be displayed in a conspicuous place on the outside of the entrance door of the OFCR compartment, and on any other door(s) installed across emergency egress routes of the OFCR compartment, requiring those doors to be latched open during TT&L when the OFCR compartment is occupied. This requirement does not apply to emergency escape hatches installed in the floor of the OFCR compartment. A placard must be displayed in a conspicuous place on the outside of the entrance door to the OFCR compartment that requires it to be closed and locked when it is not

occupied. Procedures for meeting these requirements must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

(d) For all doors installed in the OFCR compartment, there must be a means to preclude anyone from being trapped inside the OFCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the OFCR compartment at any time.

3. In addition to the requirements of § 25.562 for seats, which are occupiable during takeoff and landing, and restraint systems, the OFCR compartment structure must be compatible with the loads imposed by the seats as a result of the conditions specified in § 25.562(b).

4. There must be at least two emergency evacuation routes that could be used by each occupant of the OFCR compartment to rapidly evacuate to the main cabin. These evacuation routes must be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with sufficient separation within the OFCR compartment to minimize the possibility of an event either inside or outside of the OFCR compartment rendering both routes inoperative.

Compliance with requirements of proposed Special Condition No. 4(a) may be shown by inspection or by analysis. Regardless of which method is used, the maximum acceptable distance between crew rest compartment outlets is 60 feet.

Compliance by Inspection

Inspection may be used to show compliance with proposed Special Condition No. 4(a). An inspection finding that an OFCR compartment has evacuation routes located so that each occupant of the seats and berths has an unobstructed route to at least one of the OFCR compartment outlets, regardless of the location of a fire, would be reason for a finding of compliance. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, crew rest compartment outlets that are located at absolute opposite ends (i.e., adjacent to opposite end walls) of the OFCR compartment would require no further review or analysis with regard to their separation.

Compliance by Analysis

Analysis must show that the OFCR compartment configuration and interior features allow all occupants of the OFCR compartment to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the OFCR compartment, considered separately, and the design elements used to reduce the available fuel for the fire.

(2) Design elements used to reduce fire ignition sources in the OFCR compartment.

(3) Distribution and quantity of emergency equipment within the OFCR compartment.

(4) Structural failure or deformation of components that could block access to the available evacuation routes (for example seats, folding berths, contents of stowage compartments, etc.).

(5) An incapacitated person blocking the evacuation routes.

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. Possibilities for design components affecting evacuation that should be considered include, but are not limited to, seat deformations (reference §§ 25.561(d) and 25.562(c)(8)), seat back break-over, rigid structure that reduces access from one part of the compartment to another, and items known to be the cause of potential hazards. Factors that also should be considered are availability of emergency equipment to address fire hazards, availability of communications equipment, supplemental restraint devices to retain items of mass that, if broken loose, could hinder evacuation, and load path isolation between components containing evacuation routes.

Analysis of fire threats should be used in determining placement of required fire extinguishers and protective breathing equipment (PBE). This analysis should consider the possibility of fire in any location in the OFCR compartment. The location and quantity of PBE equipment and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the OFCR compartment.

The intent of this proposed special condition is to provide sufficient exit route separation. Therefore the separation analysis described above should not be used to approve OFCR compartment outlets that have less physical separation (measured between the centroid of each outlet opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For an OFCR compartment with one outlet located near the forward or aft end of the compartment (as measured by having the centroid of the outlet opening within 20 percent of the total length of the compartment from the forward or aft end of the compartment) the outlet separation from one outlet to the other should not be less than 50 percent of the total OFCR compartment length.

For OFCR compartments with neither required crew rest compartment outlet located near the forward or aft end of the compartment (as measured by not having the centroid of either outlet opening within 20 percent of the forward or aft end of the total OFCR compartment length), the outlet separation from one outlet to the other should not be less than 30 percent of the total OFCR compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the crew rest compartment outlets. One of the two OFCR compartment outlets should not be located where normal movement or evacuation by passengers occurs (main aisle, cross aisle, or galley complex, for example) that would impede egress from the OFCR compartment. If an evacuation route is in an area where normal movement or evacuation of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants of the OFCR compartment from head injury. Use of evacuation routes must not be dependent on any powered device. If an OFCR compartment outlet is over an area where there are passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the process of evacuating an incapacitated person(s). If such an evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including procedures for emergency evacuation of an incapacitated occupant from the OFCR compartment, must be established. The applicant must transmit all of these procedures to the operator for incorporation into its training programs and appropriate operational manuals.

(d) There must be a limitation in the airplane flight manual or other suitable means to require that crewmembers be trained in the use of the OFCR compartment evacuation routes. This training must instruct them to ensure that the OFCR compartment (including seats, doors, etc.) is in its proper TT&L configuration during TT&L.

(e) For times when there is no flight attendant present in the area around the door to the OFCR compartment, and also during an emergency, including an emergency evacuation, there must be a means to prevent passengers on the main deck from entering the OFCR compartment.

(f) Doors or hatches separating the OFCR compartment from the main deck must not adversely affect evacuation of occupants on the main deck (slowing evacuation by encroaching into aisles, for example) or cause injury to those occupants during opening or while opened.

(g) The means of opening doors and hatches to the OFCR compartment must be simple and obvious. In addition, the OFCR compartment doors and hatches must be able to be closed from the main passenger cabin.

5. There must be a means of evacuating an incapacitated person (representative of a ninety-fifth percentile male) from the OFCR compartment to the passenger cabin floor.

Such an evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the OFCR compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes with stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OFCR compartment, or to the first landing, whichever is lower.

6. The following signs and placards must be provided in the OFCR compartment and they must meet the following criteria:

(a) At least one exit sign, located near each OFCR compartment outlet, meeting the emergency lighting requirements of § 25.812(b)(1)(i). One allowable exception would be a sign with reduced background area of no less than 5.3 square inches (excluding the letters), provided that it is installed so that the material surrounding the exit sign is light in color (white, cream, light beige, for example). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch-wide background border around the letters would be acceptable. Another allowable exception is a sign with a symbol that the FAA has determined to be equivalent for use as an exit sign in an OFCR compartment.

(b) An appropriate placard located conspicuously on or near each OFCR compartment door or hatch that defines the location and the operating instructions for access to and operation of the outlet door or hatch.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The door or hatch handles and operating instruction placards required by Special Condition No. 6(b) of these special conditions must be illuminated to at least 160 microlamberts under emergency lighting conditions.

7. There must be a means in the event of failure of the aircraft's main power system, or of the normal OFCR compartment lighting system, for emergency illumination to be automatically provided for the OFCR compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient to allow occupants of the OFCR compartment to locate and move to the main passenger cabin floor by means of each evacuation route.

(d) The illumination level must be sufficient, with the privacy curtains in the closed position, for each occupant of the OFCR compartment to locate a deployed oxygen mask.

8. There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the OFCR compartment. There must also be two-way communications between occupants of the OFCR compartment and each flight attendant station in the passenger cabin that is required per § 25.1423(g) to have a public address system microphone. In addition, the public address system must include provisions to provide only the relevant information to the crewmembers in the OFCR compartment (for example fire in flight, aircraft depressurization, preparation of the compartment for landing, etc.). That is, provisions must be made so that occupants of the OFCR compartment will not be disturbed with normal, non-emergency announcements made to the passenger cabin.

9. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the OFCR compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units, for a period of at least ten minutes.

10. There must be a means, readily detectable by seated or standing occupants of the OFCR compartment, to indicate when seat belts should be fastened. Seat belt type restraints must be provided for berths and must be compatible with the sleeping position during cruise conditions. There must be a placard on each berth requiring that these restraints be fastened when occupied. If compliance with any of the other requirements of these proposed special conditions is predicated on specific head location, there must be a placard identifying that head position.

11. PBE devices must be provided in accordance with § 25.1439, except that in lieu of a device for each crewmember, the following PBE devices, approved to Technical Standard Order (TSO)–C116 or equivalent, must be provided: Two PBE devices suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater. The following equipment must also be provided in the OFCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

(b) One flashlight.

Note: Additional PBE devices and fire extinguishers in specific locations, beyond the minimum numbers prescribed in proposed Special Condition No. 11, may be required as a result of the egress analysis accomplished to satisfy proposed Special Condition No. 4(a).

12. A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the OFCR compartment, including those areas partitioned by curtains or doors. Flight tests must be conducted to show compliance with this requirement. If a fire occurs, each system (or systems) must provide:

(a) A visual indication to the flight deck within one minute after the start of a fire.

(b) An aural warning in the OFCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

13. Means to fight a fire must be provided. The means can either be a built-in extinguishing system or manual hand-held bottle extinguishing system.

(a) For a built-in extinguishing system:

(1) The system must have adequate capacity to suppress a fire considering the fire threat, volume of the compartment, and the ventilation rate. The system must have sufficient extinguishing agent to provide an initial knockdown and suppression environment per the minimum performance standards that have been established for the agent being used. In addition, certification flight testing will verify the acceptable duration that the suppression environment can be maintained.

(2) If the capacity of the extinguishing system does not provide effective fire suppression that will last for the duration of flight from the farthest point in route to the nearest suitable landing site expected in service, an additional manual firefighting procedure must be established. For the built-in extinguishing system, the time duration for effective fire suppression must be established and documented in the firefighting procedures in the airplane flight manual. If the duration of time for demonstrated effective fire suppression provided by the built-in extinguishing agent will be exceeded, the firefighting procedures must instruct the crew to:

(i) Enter the OFCR compartment at the time that demonstrated fire suppression effectiveness will be exceeded.

(ii) Check for and extinguish any residual fire.

(iii) Confirm that the fire is out.

(b) For a manual hand-held bottle extinguishing system (designed as the sole means to fight a fire or to supplement a built-in extinguishing system of limited suppression duration) for the OFCR:

(1) There must be a limitation in the airplane flight manual or other suitable means requiring that crewmembers be trained in the firefighting procedures.

(2) The compartment design must allow crewmembers equipped for firefighting to have unrestricted access to all parts of the compartment.

(3) The time for a crewmember on the main deck to react to the fire alarm, don the firefighting equipment, and gain access to the OFCR compartment must not exceed the time it would take for the compartment to become filled with smoke, thus making it difficult to locate the fire source.

(4) Approved procedures describing methods for searching the OFCR compartment for fire source(s) must be established. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

14. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the OFCR compartment from entering any other occupiable compartment.

(a) Small quantities of smoke may penetrate from the OFCR compartment into other occupied areas during the one-minute smoke detection time.

(b) There must be a provision in the firefighting procedures to ensure that all doors and hatches at the OFCR compartment outlets are closed after evacuation of the compartment and during firefighting to minimize smoke and extinguishing agent entering other occupiable compartments.

(c) Smoke entering any occupiable compartment when access to the OFCR compartment is open for evacuation must dissipate within five minutes after the access to the OFCR compartment is closed.

(d) Hazardous quantities of smoke may not enter any occupied compartment during access to manually fight a fire in the OFCR compartment. The amount of smoke entrained by a firefighter exiting the OFCR compartment is not considered hazardous.

(e) Flight tests must be conducted to show compliance with this requirement.

15. There must be a supplemental oxygen system within the OFCR compartment as follows:

(a) There must be at least one mask for each seat and berth in the OFCR compartment.

(b) If a destination area (such as a changing area) is provided in the OFCR compartment, there must be an oxygen mask readily available for each occupant who can reasonably be expected to be in the destination area (with the maximum number of required masks within the destination area being limited to the placarded maximum occupancy of the OFCR compartment).

(c) There must also be an oxygen mask readily accessible to each occupant who can reasonably be expected to be moving from the main cabin into the OFCR compartment, moving around within the OFCR compartment, or moving from the OFCR compartment to the main cabin.

(d) The system must provide an aural and visual alert to warn occupants of the OFCR compartment to don oxygen masks in the event of decompression. The aural and visual alerts must activate concurrently with deployment of the oxygen masks in the passenger cabin. To compensate for sleeping occupants, the aural alert must be heard in each section of the OFCR compartment and must sound continuously for a minimum of five minutes or until a reset switch within the OFCR compartment is activated. A visual alert that informs occupants that they must don an oxygen mask must be visible in each section.

(e) There must also be a means by which oxygen masks can be manually deployed from the flight deck.

(f) Approved procedures must be established for OFCR occupants in the event of decompression. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

(g) The supplemental oxygen system for the OFCR compartment must meet the same 14 CFR part 25 regulations as the supplemental oxygen system for the passenger cabin occupants except for the 10 percent additional masks requirement of 14 CFR 25.1447(c)(1).

(h) The illumination level of the normal OFCR compartment lighting system must automatically be sufficient for each occupant of the compartment to locate a deployed oxygen mask.

16. The following additional requirements apply to OFCR compartments that are divided into several sections by the installation of curtains or partitions:

(a) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the OFCR compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(b) For each section of the OFCR compartment created by the installation of a curtain, the following requirements of these proposed special conditions must be met with the curtain open or closed:

(1) No smoking placard requirement (Proposed Special Condition No. 1).

(2) Emergency illumination requirement (Proposed Special Condition No. 7).

(3) Emergency alarm system requirement (Proposed Special Condition No. 9).

(4) Seat belt fasten signal or return to seat signal as applicable requirement (Proposed Special Condition No. 10).

(5) Smoke or fire detection system requirement (Proposed Special Condition No. 12).

(6) Oxygen system requirement (Proposed Special Condition No. 15).

(c) OFCR compartments that are visually divided to the extent that evacuation could be affected must have exit signs directing occupants to the primary stairway outlet. The exit signs must be provided in each separate section of the OFCR compartment, except for curtained bunks, and must meet requirements of § 25.812(b)(1)(i). An exit sign with reduced background area or a symbolic exit sign as described in Proposed Special Condition No. 6(a) may be used to meet this requirement.

(d) For sections within an OFCR compartment created by the installation of a rigid partition with a door separating the sections, the following requirements of these proposed special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, the applicant must show that any door between the sections has been designed to preclude anyone from being trapped inside a section of the compartment. Removal of an incapacitated occupant from within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for a short time duration, such as a changing area or lavatory, is not required, but removal of an incapacitated occupant from within such a small room must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway door.

(4) In each section, there must be exit signs meeting requirements of § 25.812(b)(1)(i), or shown to have an equivalent level of safety, that direct occupants to the primary stairway outlet. An exit sign with reduced background area or a symbolic exit sign as described in Proposed Special Condition No. 6(a) may be used to meet this requirement.

(5) Proposed Special Conditions No. 1 (no smoking placards), No. 7 (emergency illumination), No. 9 (emergency alarm system), No. 10 (fasten seat belt signal or return to seat signal as applicable), No. 12 (smoke or fire detection system), and No. 15 (oxygen system) must be met with the door open or closed.

(6) Proposed Special Conditions No. 8 (two-way voice communication) and No. 11 (emergency firefighting and protective equipment) must be met independently for each separate section except for lavatories or other small areas that are not intended to be occupied for extended periods of time.

17. If a waste disposal receptacle is fitted in the OFCR compartment, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

18. Materials (including finishes or decorative surfaces applied to the materials) must comply with the requirements of § 25.853 as amended by Amendment 25–116. Seat cushions and mattresses must comply with the flammability requirements of § 25.853(c) as amended by Amendment 25–116 and the test requirements of part 25, appendix F, part II, or other equivalent methods.

19. The addition of a lavatory within the OFCR compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Proposed Special Condition No. 12 for smoke detection.

20. Each stowage compartment in the OFCR compartment, except for underseat compartments for occupant convenience, must be completely enclosed. All enclosed stowage compartments within the OFCR compartment that are not limited to stowage of emergency equipment or airplane-supplied equipment must meet the design criteria given in the table below. Enclosed stowage compartments greater than 200 ft.^{3} in interior volume are not addressed by this proposed special condition. The in-flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

DESIGN CRITERIA FOR ENCLOSED STOWAGE COMPARTMENTS NOT LIMITED TO STOWAGE OF EMERGENCY OR AIRPLANE-SUPPLIED EQUIPMENT

Fire protection features	Applicability of fire protection requirements by interior volume		
	Less than 25 cubic feet	25 Cubic feet to less than 57 cubic feet	57 Cubic feet to 200 cubic feet
Compliant Materials of Construction[1]	Yes	Yes	Yes.
Smoke or Fire Detectors[2]	No	Yes	Yes.
Liner[3]	No	Conditional	Yes.
Fire Location Detector[4]	No	Yes	Yes.

[1] Compliant Materials of Construction

The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (i.e., 14 CFR part 25 Appendix F, Parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft.^{3} in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] Smoke or Fire Detectors

Enclosed stowage compartments equal to or exceeding 25 ft.^{3} in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire.

(b) An aural warning in the OFCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] Liner

If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (i.e., § 25.855 at Amendment 25–116, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft.^{3} but less than 57 ft.^{3} in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft.^{3} in interior volume but less than or equal to 200 ft.^{3}, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] Fire Location Detector

If an OFCR compartment has enclosed stowage compartments exceeding 25 ft.^{3} interior volume that are located separately from the other stowage compartments (located, for example, away from one central location, such as the entry to the OFCR compartment or a common area within the OFCR compartment, where the other stowage compartments are), that OFCR compartment would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington, on December 28, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31116 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1256; Directorate Identifier 2009–CE–064–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA Model TBM 700 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been discovered that the foam inside the towing bar box is not conformed to the certification specification, and especially the flame resistance properties.

In case of fire, in the front baggage compartment, the non conformed foam could rapidly propagate the flames and/or emit toxic fumes in the cabin.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1256; Directorate Identifier 2009–CE–064–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2009–0238–E, dated October 30, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been discovered that the foam inside the towing bar box is not conformed to the certification specification, and especially the flame resistance properties.

In case of fire, in the front baggage compartment, the non conformed foam could rapidly propagate the flames and/or emit toxic fumes in the cabin.

For the reason stated above the Airworthiness Directive (AD), as a temporary measure, mandates the removal of the foam, pending a foam change.

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

Relevant Service Information

SOCATA has issued Mandatory Service Bulletin SB 70–179, dated October 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this proposed AD will affect 164 products of U.S. registry. We also estimate that it would take about 0.5 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,560, or $40 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SOCATA: Docket No. FAA–2009–1256; Directorate Identifier 2009–CE–064–AD.

Comments Due Date

(a) We must receive comments by February 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to model TBM 700 airplanes, serial numbers (S/N) 331 through 9999, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 9: Towing and Taxing.

Reason

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

It has been discovered that the foam inside the towing bar box is not conformed to the certification specification, and especially the flame resistance properties.

In case of fire, in the front baggage compartment, the non conformed foam could rapidly propagate the flames and/or emit toxic fumes in the cabin.

For the reason stated above the Airworthiness Directive (AD), as a temporary measure, mandates the removal of the foam, pending a foam change.

Actions and Compliance

(f) Unless already done, within the next 20 hours time-in-service after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first, remove the foam from the towing bar stowage box following SOCATA Mandatory Service Bulletin SB 70–179, dated October 2009.

Note 1: Airplanes delivered after October 13, 2009, may have had SOCATA SB 70–179, dated October 2009, incorporated at the factory (S/N 510 and S/N 529 through 9999).

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: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0238–E, dated October 30, 2009; and SOCATA Mandatory Service Bulletin SB 70–179, dated October 2009, for related information.

Issued in Kansas City, Missouri, on December 28, 2009.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31168 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1227; Directorate Identifier 2009–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. (Type Certificate Previously Held by Canadair) Model CL–600–2B16 (CL–604) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Two cases of a crack on a ''dry'' ADG (Air Driven Generator) (Hamilton Sundstrand part number in the 761339 series) in the aft area of the strut and generator housing assembly, have been reported on CL–600–2B19 aircraft. The same part number is also installed on CL–600–2B16 (CL–604) aircraft. Investigation determined that the crack was in an area of the strut where the wall thickness of the casting was below specification, due to a manufacturing anomaly in a specific batch of ADGs. Structural failure and departure of the ADG during deployment could possibly result in damage to the aircraft structure. If deployment were activated by a dual engine shutdown, ADG structural failure would also result in loss of hydraulics for the flight controls. The unsafe condition is possible loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 18, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1227; Directorate Identifier 2009–NM–119–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF–2009–24, issued May 19, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Two cases of a crack on a ''dry'' ADG (Air Driven Generator) (Hamilton Sundstrand part number in the 761339 series) in the aft area of the strut and generator housing assembly, have been reported on CL–600–2B19 aircraft. The same part number is also installed on CL–600–2B16 (CL–604) aircraft. Investigation determined that the crack was in an area of the strut where the wall thickness of the casting was below specification, due to a manufacturing anomaly in a specific batch of ADGs. Structural failure and departure of the ADG during deployment could possibly result in damage to the aircraft structure. If deployment were activated by a dual engine shutdown, ADG structural failure would also result in loss of hydraulics for the flight controls.
>
> This directive gives instructions to check the part number of the installed ADG and, for ADGs with a part number in the 761339 series, the serial numbers of the ADG and the strut and generator housing assembly are also to be checked. If these serial numbers are within specified ranges * * *, initial and subsequent repeat fluorescent penetrant inspections of the ADG strut are required.
>
> This directive also gives instructions to perform a fluorescent penetrant inspection after each unscheduled in-flight ADG deployment and a [general] visual inspection after each unscheduled on-ground ADG deployment. Instructions regarding re-identification (where applicable) and replacement parts are also included.

The unsafe condition is possible loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A604–24–017, Revision 01, dated January 15, 2007; and Service Bulletin 604–24–019, dated October 1, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 378 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $60,480, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Type Certificate Previously Held by Canadair): Docket No. FAA–2009–1227; Directorate Identifier 2009–NM–119–AD.

Comments Due Date

(a) We must receive comments by February 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. (Type Certificate previously held by Canadair) Model CL–600–2B16 (CL–604) airplanes; certificated in any category; serial numbers 5408 through 5665 inclusive.

Subject

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

Reason

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

Two cases of a crack on a ''dry'' ADG (Air Driven Generator) (Hamilton Sundstrand part number in the 761339 series) in the aft area of the strut and generator housing assembly, have been reported on CL–600–2B19 aircraft. The same part number is also installed on CL–600–2B16 (CL–604) aircraft. Investigation determined that the crack was in an area of the strut where the wall thickness of the casting was below specification, due to a manufacturing anomaly in a specific batch of ADGs. Structural failure and departure of the ADG during deployment could possibly result in damage to the aircraft structure. If deployment were activated by a dual engine shutdown, ADG structural failure would also result in loss of hydraulics for the flight controls.

This directive gives instructions to check the part number of the installed ADG and, for ADGs with a part number in the 761339 series, the serial numbers of the ADG and the strut and generator housing assembly are also to be checked. If these serial numbers are within specified ranges * * *, initial and subsequent repeat fluorescent penetrant inspections of the ADG strut are required.

This directive also gives instructions to perform a fluorescent penetrant inspection after each unscheduled in-flight ADG deployment and a [general] visual inspection after each unscheduled on-ground ADG deployment. Instructions regarding re-identification (where applicable) and replacement parts are also included.

The unsafe condition is possible loss of control of the airplane.

Actions and Compliance

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

(1) Within 400 flight hours after the effective date of this AD, inspect to determine the part number of the installed ADG and accomplish the actions required by paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the ADG can be conclusively determined from that review.

(i) If the part number of the ADG is 604–90800–23 (Hamilton Sundstrand part number 1711405), the strut wall thickness is within specification and no further action is required by this paragraph.

(ii) If the part number of the ADG is 604–90800–1, –17 or –19 (Hamilton Sundstrand part number in the 761339 series), inspect to determine the ADG serial number and do the applicable action required by paragraph (f)(1)(ii)(A), (f)(1)(ii)(B), or (f)(1)(ii)(C) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the ADG can be conclusively determined from that review.

(A) If the serial number of the ADG is 2000 or higher, the strut wall thickness is within specification and only re-identification is required. Do the actions required by paragraph (f)(8) of this AD.

(B) If the serial number of the ADG is in the range 0101 through 1999 inclusive, and the symbol 24–3 is marked in the serial number block of the identification plate, the strut wall thickness is within specification and only re-identification is required. Do the actions required by paragraph (f)(8) of this AD.

(C) If the serial number of the ADG is in the range 0101 through 1999 inclusive, and the symbol 24–3 is not marked in the serial number block of the identification plate, inspect to determine the serial number of the strut and generator housing assembly and do the applicable action required by paragraph (f)(1)(ii)(C)(*1*) or (f)(1)(ii)(C)(*2*) of this AD, as applicable.

Note 1: Guidance on serial number location can be found in Figure 1, Sheet 1, of Hamilton Sundstrand Service Bulletin ERPS10AG–24–3, Revision 3, dated March 12, 2009.

(*1*) If the serial number of the strut and generator housing assembly is in the range 0001 through 2503 inclusive, the fluorescent penetrant inspection specified in paragraph (f)(2) of this AD is required. For airplanes on which an unscheduled in-flight or on-ground ADG deployment has occurred after accomplishing the actions required by this paragraph, do the actions required by paragraph (f)(6), (f)(7), or (f)(8) of this AD, as applicable.

(*2*) If the serial number of the strut and generator housing assembly is 2504 or higher, the strut wall thickness is within specification and only re-identification is required. Do the actions required by paragraph (f)(8) of this AD.

(2) For airplanes having a strut and generator housing assembly identified in paragraph (f)(1)(ii)(C)(*1*), except for airplanes with serial numbers 5611 through 5665 on which Bombardier conducted the initial fluorescent penetrant inspection prior to aircraft delivery and on which the ADG has not been replaced since aircraft delivery: Within 400 flight hours after the effective date of this AD, do a fluorescent penetrant inspection of the ADG strut, and replace the ADG, as applicable, in accordance with paragraphs 2.A., 2.C., and 2.D. of the Accomplishment Instructions in Bombardier Alert Service Bulletin A604–24–017, Revision 01, dated January 15, 2007. If the ADG is replaced by an ADG with part number 604–90800–23 (Hamilton Sundstrand part number 1711405), no further action is required by this paragraph. Accomplishing the requirements in paragraph (f)(4) of this AD is required for airplanes on which each ADG has been inspected in accordance with this paragraph.

(3) Accomplishment of the fluorescent penetrant inspection before the effective date of this AD in accordance with the applicable service information identified in the Table 1 of this AD is acceptable for compliance with the requirements of paragraph (f)(2) of this AD.

TABLE 1—ACCEPTABLE SERVICE INFORMATION

Document	Revision	Date
Bombardier Alert Service Bulletin 604–24–017	Original	May 6, 2005.
Hamilton Sundstrand Service Bulletin ERPS10AG–24–3	Original	April 14, 2005.
Hamilton Sundstrand Service Bulletin ERPS10AG–24–3	Revision 1	April 19, 2005.
Hamilton Sundstrand Service Bulletin ERPS10AG–24–3	Revision 2	November 14, 2006.
Hamilton Sundstrand Service Bulletin ERPS10AG–24–3	Revision 3	March 12, 2009.

Note 2: In Hamilton Sundstrand Service Bulletin ERPS10AG–24–3, the fluorescent penetrant inspection is referred to as a ''penetrant check.''

(4) As of the effective date of this AD, for airplanes on which the inspection required by paragraph (f)(2) of this AD has been done and on which a scheduled ADG operational test is performed: Before further flight after each test, do a general visual inspection of the ADG strut for cracks, and replace the ADG if any crack is found, in accordance with paragraphs 2.A., 2.C., and 2.D. of the Accomplishment Instructions in Bombardier Alert Service Bulletin A604–24–017, Revision 01, dated January 15, 2007. If the ADG is replaced by an ADG with part number 604–90800–23 (Hamilton Sundstrand part number 1711405), no further action is required by this paragraph.

(5) As of the effective date of this AD, for airplanes identified in paragraph (f)(1)(ii)(C)(*1*) of this AD on which an unscheduled in-flight ADG deployment occurs: Before further flight after each deployment, do a general visual inspection of the ADG strut for cracks, and replace the ADG if any crack is found, in accordance with paragraphs 2.A., 2.B., and 2.D. of the Accomplishment Instructions in Bombardier Alert Service Bulletin A604–24–017, Revision 01, dated January 15, 2007. [If the ADG is replaced by an ADG with part number 604–90800–23 (Hamilton Sundstrand part number 1711405), no further action is required by this paragraph.] The general visual inspection required by this paragraph is not required if the fluorescent penetrant inspection required by paragraph (f)(6) of this AD is performed before further flight.

(6) For airplanes identified in paragraph (f)(1)(ii)(C)(*1*) of this AD on which an unscheduled in-flight ADG deployment occurs: Within 3 days or 10 hours time-in-service, whichever comes first, after each deployment, perform a fluorescent penetrant inspection of the ADG strut, and replace the ADG, as applicable, in accordance with paragraphs 2.A., 2.C., and 2.D. of the Accomplishment Instructions in Bombardier Alert Service Bulletin A604–24–017, Revision 01, dated January 15, 2007. If the ADG is replaced by an ADG with part number 604–90800–23 (Hamilton Sundstrand part number 1711405), no further action is required by this paragraph.

(7) For airplanes identified in paragraph (f)(1)(ii)(C)(*1*) of this AD on which an unscheduled on-ground ADG deployment task is done: Before further flight after each deployment, do a general visual inspection of the ADG strut for cracks, and replace the ADG if any crack is found, in accordance with paragraphs 2.A., 2.B., and 2.D. of the Accomplishment Instructions in Bombardier Alert Service Bulletin A604–24–017, Revision 01, dated January 15, 2007. If the ADG is replaced by an ADG with part number 604–90800–23 (Hamilton Sundstrand part number 1711405), no further action is required by this paragraph.

(8) For airplanes identified in paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), and (f)(1)(ii)(C)(*2*) of this AD: Within 400 flight hours after the effective date of this AD, re-identify the ADG, in accordance with the Accomplishment Instructions in Bombardier Service Bulletin 604–24–019, dated October 1, 2007. Following re-identification, no further action is required by this paragraph.

Note 3: Paragraph (f)(8) of this AD is applicable only if required by paragraph (f)(1)(ii)(A), (f)(1)(ii)(B), or (f)(1)(ii)(C)(*2*) of this AD. The strut wall thickness of the ADGs specified in these paragraphs is not below specification.

(9) As of the effective date of this AD, no person may install an ADG having part number 604–90800–1, –17, or –19 (Hamilton Sundstrand part number in the 761339 series) on any airplane if the serial number of the ADG is in the range 0101 through 1999 strut and the serial number of the generator housing assembly is in the range 0001 through 2503.

Note 4: The Bombardier CL–604 Illustrated Parts Catalog specifies that, for an ADG with a Hamilton Sundstrand part number in the 761339 series, future procurement is to be an ADG with Hamilton Sundstrand part number 1711405.

(10) Although Bombardier Alert Service Bulletin A604–24–017, Revision 01, dated January 15, 2007; and Service Bulletin 604–24–019, dated October 1, 2007; specify submitting certain information to the manufacturer, this AD does not require that submission.

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information tells you to submit information to the manufacturer, paragraph (f)(10) of this AD specifies that such submittal is not required.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continued Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–24, issued May 19, 2009; Bombardier Alert Service Bulletin A604–24–017, Revision 01, dated January 15, 2007; and Bombardier Service Bulletin 604–24–019, dated October 1, 2007; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31137 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–131028–09]

RIN 1545–BI85

Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide updated guidance affecting tax return preparers regarding the use of information related to lists for solicitation of tax return business; the disclosure or use of statistical compilations of data under section 7216 of the Internal Revenue Code (Code) by a tax return preparer in connection with, or in support of, a tax return preparer's tax return preparation business, including identification of additional limited circumstances when a tax return preparer who compiles statistical information may disclose the compilation without taxpayer consent, and the placement of additional restrictions on the content of the compilation that may be disclosed under those circumstances without taxpayer consent; and the disclosure or use of information for the purpose of performing conflict reviews. The text of those temporary regulations also serves as the text of these proposed regulations. This document invites comments from the public on these regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 5, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–131028–09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–131028–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–131028–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Molly K. Donnelly, (202) 622–4940; concerning the submissions of comments and requests for hearing, Richard Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to 26 CFR part 301 under section 7216 to provide modified rules relating to the ability of a tax return preparer to use tax return information, without taxpayer consent, for the purposes of compiling, maintaining, and using lists for solicitation of tax return business under § 301.7216–2(n); disclose and use statistical compilations of data described in § 301.7216–1(b)(3)(i)(B) under § 301.7216–2(o), and disclose and use tax return information for the purpose of performing conflict reviews under § 301.7216–2(p). Temporary regulations in the Procedure and Administration section of this issue of the **Federal Register** amend 26 CFR part 301. The text of those regulations also serves as the text of these regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand, and the administrability of the rules in the proposed regulations. All comments will be made available for public inspection and copying. A public

hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Molly K. Donnelly, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7216–2 is amended by revising paragraphs (n), (o), and (p) to read as follows:

§ 301.7216–2 Permissible disclosures or uses without consent of the taxpayer.

* * * * *

(n) [The text of proposed amendments to § 301.7216–2(n) is the same as the text for § 301.7216–2T(n) published elsewhere in this issue of the **Federal Register**].

(o) [The text of proposed amendments to § 301.7216–2(o) is the same as the text for § 301.7216–2T(o) published elsewhere in this issue of the **Federal Register**].

(p) [The text of proposed amendments to § 301.7216–2(p) is the same as the text for § 301.7216–2T(p) published elsewhere in this issue of the **Federal Register**].

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–31114 Filed 12–29–09; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 240

RIN 1510–AB25

Endorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking, with request for comment.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), is proposing to amend its regulation governing the endorsement and payment of checks drawn on the United States Treasury, to provide that Treasury may direct Federal Reserve Banks to debit a financial institution's account at the financial institution's servicing Federal Reserve Bank for all check reclamations that the financial institution has not protested. Financial institutions will continue to have the right to file a protest with FMS if they believe a proposed reclamation is in error.

DATES: Comments on the proposed rule must be received by March 5, 2010.

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

Comments on this rule, identified by docket FISCAL–FMS–2009–0002, should only be submitted using the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions on the Web site for submitting comments.
- *Mail:* Larry Phelps, Financial Management Service, 3700 East-West Highway, Room 7–D–24, Hyattsville, Maryland 20782.

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

Instructions: All submissions received must include the agency name (''Financial Management Service'') and docket number FISCAL–FMS–2009–0002 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

FOR FURTHER INFORMATION CONTACT: Larry Phelps, Management and Program Analyst, Check Resolution Division, at (202) 874–8263 or *larry.phelps@fms.treas.gov*; or William J. Erle, Senior Counsel, at (202) 874–6975 or *william.erle@fms.treas.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Treasury (Treasury), Financial Management Service (FMS),[1] is proposing revisions to its regulation, 31 CFR part 240 (Part 240), governing the endorsement and payment of checks drawn on the United States Treasury. The rules in Part 240 set forth how checks may be endorsed, and the remedies available to Treasury when checks are improperly negotiated, such as a negotiation over a forged endorsement. Part 240 provides for the allocation of loss between the Government and endorsers of the check. The regulation also provides information on how Treasury will collect debts owed by financial institutions and other endorsers when they fail to pay check reclamations made by Treasury pursuant to the regulation.

FMS is proposing to amend Part 240 to provide that Treasury may direct Federal Reserve Banks to debit a financial institution's account at the financial institution's servicing Federal Reserve Bank for all check reclamations for which the financial institution has not submitted a valid protest with supporting documentation. Financial institutions will continue to have the right to file a protest with FMS if they believe a proposed reclamation is in error and are able to supply supporting documentation.

Under the existing regulation, Treasury sends a ''Request for Refund (Reclamation)'' to the financial institution that presented the check being reclaimed. The request advises the

[1] FMS is the bureau within Treasury that is charged with implementing Treasury's authority in this area. The terms Treasury and FMS are used interchangeably in this proposed rule.

financial institution of the amount demanded and the reason for the demand. If the debtor financial institution does not make payment, Treasury presents follow-up demands by sending monthly statements to the financial institution and begins to assess interest, penalties and administrative costs at intervals after the 60th calendar day.

Under the existing regulation, if the reclamation debt is not paid within 120 calendar days of the reclamation date, Treasury attempts to collect the debt through administrative offset. If administrative offset is unsuccessful, Treasury attempts to collect the debt through Treasury Check Offset (TCO). Finally, if administrative offset and TCO are unsuccessful, Treasury discharges the debt under 31 CFR 903.5 and reports the unpaid amount to the IRS. This is a time-consuming process that unnecessarily burdens both FMS systems and human resources.

FMS intends to expedite and streamline the process of collecting unpaid reclamations by instructing a financial institution's servicing Federal Reserve Bank to debit that financial institution's Federal Reserve account if that financial institution has neither paid nor filed a valid protest with supporting documentation within 30 days of the date of the reclamation. FMS will notify the financial institution of the reclamation by sending a Notice of Direct Debit, which will also inform the financial institution that, if the reclamation is not paid by the 30th calendar day from the direct debit notice date, the financial institution's reserve account will be debited by its servicing Federal Reserve Bank. FMS will allow, as FMS currently does for all reclamations, the ability to challenge the debit both before and after it occurs. The financial institution may protest within the 30 calendar days from the direct debit notice. After the direct debit occurs, the financial institution has an additional 30 calendar days from the direct debit date to submit a valid protest with supporting documentation.

The vast majority of reclamation debts (currently 91 percent) are already paid by financial institutions within 30 calendar days. The remaining 9% of reclamations either have protests pending, which means the debt would not be subject to direct debit, or are for financial institutions that have ignored repeated notices. In most cases, directly debiting the financial institution's reserve account would simply streamline the reclamation and collection processes. FMS believes this change would result in operational efficiencies for both Treasury and the financial institutions.

If Treasury is unable to debit a financial institution's reserve account, the current procedures for assessing interest, penalty and administrative cost amounts and for attempting to collect the reclamation debt through administrative offset and TCO would continue to apply.

II. Procedural Analyses

Request for Comment on Plain Language

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

Regulatory Planning and Review

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

Regulatory Flexibility Act Analysis

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. This rule would eliminate certain administrative fees and interest and penalty charges in order to streamline and automate reclamation procedures. The proposed changes to the regulation related to automating reclamations should have a minimal economic impact on small financial institutions and in fact, may reduce some costs for financial institutions affected by the changes. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. FMS invites comments on this determination.

List of Subjects in 31 CFR Part 240

Banks, Banking, Checks, Counterfeit checks, Federal Reserve system, Forgery, Guarantees.

For the reasons set forth in the preamble, we are amending 31 CFR part 240 as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

1. The authority citation for part 240 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321, 3327, 3328, 3331, 3334, 3711, 3712; 332 U.S. 234 (1947); 318 U.S. 363 (1942).

2. In § 240.1, add new paragraph (d) to read as follows:

§ 204.1 Scope of regulations.

* * * * *

(d) A financial institution's endorsement or presentment of a U.S. Treasury check shall constitute its agreement to this part. The financial institution hereby authorizes its servicing Federal Reserve Bank to debit its Federal Reserve account for the amount of the reclamation and any accrued interest, penalties and/or administrative costs in accordance with the provisions of § 240.9.

3. In § 240.9, revise paragraphs (a) and (b)(4)(iii) to read as follows:

§ 240.9 Reclamation procedures; reclamation protests.

(a) Reclamation procedures. (1) Treasury will send a ''Notice of Direct Debit (Reclamation)'' to the reclamation debtor in accordance with § 240.8(a). This notice will advise the reclamation debtor of the amount demanded and the reason for the demand. Treasury will provide notice to the reclamation debtor that:

(i) If the reclamation debt is not paid within 30 calendar days of the reclamation date, Treasury intends to collect the amount outstanding by instructing the appropriate Federal Reserve Bank to debit the account utilized by the reclamation debtor. The Federal Reserve Bank will provide advice of the debit to the reclamation debtor;

(ii) The reclamation debtor has an opportunity to inspect and copy Treasury's records with respect to the reclamation debt;

(iii) The reclamation debtor may, by filing a protest in accordance with § 240.9(b), request Treasury to review its decision that the reclamation debtor is liable for the reclamation debt. If such a protest is filed within 30 calendar days of the reclamation date, Treasury will not instruct the appropriate Federal Reserve Bank to debit the account utilized by the reclamation debtor while the protest is still pending; and

(iv) The reclamation debtor has an opportunity to enter into a written agreement with Treasury for the repayment of the reclamation debt. A request for a repayment agreement must be accompanied by documentary proof that satisfies Treasury that the reclamation debtor is unable to repay the entire amount owed when due.

(2) Requests by a reclamation debtor for an appointment to inspect and copy

Treasury's records with respect to a reclamation debt and requests to enter into repayment agreements must be sent in writing to: Department of the Treasury, Financial Management Service, Check Resolution Division, Reclamation Branch, Room 700D, P.O. Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov*.

(3) If the Federal Reserve Bank is unable to debit the financial institution's reserve account, FMS will assess interest, penalties, and administrative costs in accordance with § 240.8. Additionally, Treasury will proceed to collect the reclamation debt through offset in accordance with § 240.10 and Treasury Check Offset in accordance with § 240.11.

(4) If Treasury determines that a reclamation has been made in error, Treasury will abandon the reclamation. If Treasury already has collected the amount of the reclamation from the reclamation debtor, Treasury will promptly refund to the reclamation debtor the amount of its payment.

(b) * * *

(4) * * *

(iii) If the Director, Check Resolution Division, or an authorized designee, finds, by a preponderance of the evidence, that the reclamation debtor is liable for the reclamation debt, Treasury will notify the reclamation debtor, in writing, of his or her decision. If the reclamation debtor has not paid the reclamation in full, Treasury will direct the Federal Reserve Bank to debit the financial institution's reserve account immediately, provided that at least 30 calendar days have passed from the date of the Notice of Direct Debit. If at least 30 calendar days have not yet passed from the date of the Notice of Direct Debit, Treasury will direct the Federal Reserve Bank to debit the financial institution's reserve account on the 30th calendar day from the date of the Notice of Direct Debit. The Federal Reserve Bank will provide advice of the debit to the reclamation debtor. If the appropriate Federal Reserve Bank is unable to debit a reclamation debtor's reserve account, Treasury will proceed to collect the reclamation debt through offset in accordance with § 240.10 and § 240.11.

* * * * *

Dated: December 23, 2009.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–31166 Filed 12–31–09; 8:45 am]

BILLING CODE 4810–35–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–1186; FRL–9099–8]

Approval and Promulgation of Air Quality Implementation Plan: Kentucky; Approval Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the Paducah Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Kentucky State Implementation Plan (SIP) concerning the maintenance plan addressing the 1997 8-hour ozone standard for the Paducah 8-hour ozone attainment area, which comprises Marshall County and a portion of Livingston County (hereafter referred to as the ''Paducah Area''). This maintenance plan was submitted to EPA on May 27, 2008, by the Commonwealth of Kentucky, and ensures the continued attainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS) through the year 2020. On July 15, 2009, the Commonwealth of Kentucky submitted supplemental information with updated emissions tables for this Area to reflect actual emissions. EPA proposes to find that this plan meets the statutory and regulatory requirements, and is consistent with EPA's guidance. EPA is proposing to approve the revisions to the Kentucky SIP, pursuant to Section 110 of the Clean Air Act (CAA). On March 12, 2008, EPA issued a revised ozone standard. The current action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for the Paducah Area under the 2008 standard will be addressed in the future.

DATES: Comments must be received on or before February 3, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–1186, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2007–1186, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2007–1186. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://*

www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9152. Mr. Farngalo can also be reached via electronic mail at *farngalo.zuri@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Background

In accordance with the CAA, the Paducah Area, consisting of Marshall County and a portion of Livingston County in Kentucky, was designated as marginal nonattainment for the 1-hour ozone NAAQS effective November 6, 1991 (56 FR 56694) because the Area did not meet the 1-hour ozone NAAQS. On November 13, 1992, the Commonwealth of Kentucky submitted a request to redesignate the Paducah Area to attainment for the 1-hour ozone standard. At the same time as the redesignation request, Kentucky submitted the required ozone monitoring data and maintenance plan to ensure that the Paducah Area would remain in attainment for the 1-hour ozone standard for a period of 10 years, consistent with the CAA section 175A(a). The maintenance plan submitted by Kentucky followed EPA guidance for limited maintenance areas, which applied to 1-hour ozone standard areas with design values less than 85 percent of the applicable standard (0.12 parts per million (ppm)). On February 7, 1995, EPA approved Kentucky's request to redesignate the Paducah Area (60 FR 7124) to attainment for the 1-hour ozone standard.

On April 30, 2004, EPA designated areas for the 1997 8-hour ozone NAAQS (69 FR 23858), and published the final Phase I Implementation Rule for the 1997 8-hour ozone NAAQS (69 FR 23951) (Phase I Rule). Marshall County and a portion of Livingston County (i.e., which make up the Paducah Area) were designated attainment for the 1997 8-hour ozone standard, effective June 15, 2004. The Paducah attainment area consequently was required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA and the Phase I Rule, 40 CFR 51.905(a)(3) and (4). On May 20, 2005, EPA issued guidance providing information on how a state might fulfill the maintenance plan obligation established by the CAA and the Phase I Rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act,* May 20, 2005—hereafter referred to as ''Wegman Memorandum''). On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated portions of EPA's Phase I Implementation Rule for the 1997 8-hour ozone standard. *See South Coast Air Quality Management District.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). The Court vacated those portions of the Rule that provided for regulation of the 1997 8-hour ozone nonattainment areas designated under Subpart 1 in lieu of Subpart 2 (of part D of the CAA), among other portions. The Court's decision did not alter any requirements under the Phase I Rule for section 110(a)(1) maintenance plans. EPA is proposing to find that Kentucky's May 27, 2008, proposed SIP revision satisfies the section 110(a)(1) CAA requirements for a plan that provides for implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS in the Paducah Area. On March 12, 2008, EPA issued a revised ozone standard. The current action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for the Paducah Area under the 2008 standard will be addressed in the future.

II. Analysis of the Commonwealth's Submittal

On May 27, 2008, the Commonwealth of Kentucky submitted a SIP revision containing the 1997 8-hour ozone maintenance plan for the Paducah Area as required by section 110(a)(1) of the CAA and the provisions of EPA's Phase I Rule (*see* 40 CFR 51.905(a)(4)). The purpose of this maintenance plan is to ensure continued attainment and maintenance of the 1997 8-hour ozone NAAQS in the Paducah Area until 2020.

As required, this plan provides for continued attainment and maintenance of the 1997 8-hour ozone NAAQS in the Paducah Area for 10 years from the effective date of the Area's designation as attainment for the 1997 8-hour ozone NAAQS, and includes contingency measures. A July 15, 2009, submittal from Kentucky updated the emissions projections for point sources for 2005 and 2008 with actual data, and revised the point source projections for 2011, 2014, 2017 and 2020 based on more recent data. Each of the section 110(a)(1) plan components is discussed below for the Paducah Area.

(a) *Attainment Inventory.* In order to demonstrate maintenance in the Paducah Area, Kentucky developed comprehensive inventories of volatile organic compounds (VOC) and nitrogen oxide (NO_X) emissions from area, stationary, and mobile sources using 2002 as the base year. The year 2002 is an appropriate year for Kentucky to base attainment level emissions because states may select any one of the three years on which the 1997 8-hour attainment designation was based (2001, 2002, and 2003). The Commonwealth's submittal contains the detailed inventory data and summaries by source category. Using the 2002 inventory (as a base year) reflects one of the years used for calculating the air quality design values on which the 1997 8-hour ozone designation decisions were based.

A further practical reason for selecting 2002 as the base year emission inventory is that section 110(a)(2)(B) of the CAA and the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) require states to submit emissions inventories for all criteria pollutants and their precursors every three years, on a schedule that includes the emissions year 2002. The due date for the 2002 emissions inventory is established in the Rule as June 2004. In accordance with these requirements, Kentucky compiles a statewide emissions inventory for point sources on an annual basis. On-road mobile emissions of VOC and NO_X were estimated using MOBILE6.2 motor vehicle emissions factor computer model. Non-road mobile emissions data were derived using the U.S. EPA's Non-Road Model.

In projecting data for the attainment year 2020 inventory, Kentucky used several methods to project data from the base year 2002 to the years 2005, 2008, 2011, 2014, 2017 and 2020. These actual and projected inventories were developed using EPA-approved technologies and methodologies. Point source and non-point source projections were derived from the Emissions

Growth Analysis System version 4.0 (EGAS 4.0). Non-road mobile projections were derived from EGAS 4.0, as well as from the National Mobile Inventory Model.

The following tables provide VOC and NO_X emissions data for the 2002 base attainment year inventory; as well as actual VOC and NO_X emission inventory data for 2005 and 2008; and projected VOC and NO_X emission inventory data for 2011, 2014, 2017 and 2020.

TABLE 1—PADUCAH AREA

[VOC and NO_X Emissions Inventory] [1]

Emissions	2002	2005	2008	2011	2014	2017	2020
Total VOC (tons per day)	77.46	66.77	21.95	21.87	21.73	21.59	21.64
Total NO_X (tons per day)	8.40	7.52	7.10	6.62	6.05	5.69	5.52

As shown in Table 1 above, the Paducah Area is projected to decrease total VOC and NO_X emissions from the base year of 2002 to the maintenance year of 2020, thus demonstrating continued attainment/maintenance of the 1997 8-hour ozone standard. Total VOC emissions are projected to steadily decrease from the base year of 2002 through 2017, but are then projected to slightly increase by 0.05 tons per day between the years 2017 and 2020. However, year 2020 emissions projected for both VOC and NOx are well under the 2002 baseline year emissions levels. Thus Kentucky demonstrated that the 1997 8-hour ozone standard will continue to be maintained.

As shown in the table above, Kentucky has demonstrated that the future year emissions will be less than the 2002 base attainment year's emissions for the 1997 8-hour ozone NAAQS. The attainment inventory submitted by Kentucky for this Area is consistent with the criteria discussed in the Wegman Memorandum. EPA finds that the actual emissions levels in 2005, and 2008, along with the future emissions for 2011, 2014, 2017, and 2020 are expected to be less than the emissions levels in 2002. See Table 2 for design value trends for this Area.

In the event that a future 8-hour ozone monitoring reading in this Area is found to violate the 1997 8-hour ozone standard, the contingency plan section of the maintenance plan requires that at least one of the listed measures will be promptly implemented to ensure that this Area returns to maintenance of the 1997 8-hour ozone standard. Please see section (d) Contingency Plan, below, for additional information related to the contingency measures.

(b) *Maintenance Demonstration.* The primary purpose of a maintenance plan is to demonstrate how an area will continue to remain in compliance with the 1997 8-hour ozone standard for the 10-year period following the effective date of designation as unclassifiable/attainment. The end projection year for the maintenance plan for Paducah Area was 2020. As discussed in section (a) Attainment Inventory above, Kentucky identified the level of ozone-forming emissions that were consistent with attainment of the NAAQS for ozone in 2002. For the original submittal, Kentucky projected VOC and NO_X emissions for the years 2005, 2008, 2011, 2014, 2017 and 2020 in the Paducah Area. Subsequently, Kentucky provided updated projections for all years. EPA finds that the future emissions levels in those years are expected to be below the emissions levels in 2002.

Kentucky's SIP revision also relies on a combination of several air quality measures that will provide for additional 8-hour ozone emissions reductions in the Paducah Area. These measures include the potential implementation of the following, among others: (1) Federal motor vehicle control program; (2) fleet turnover of automobiles; (3) low reid vapor pressure of gasoline; (4) tier 2 motor vehicle emissions and fuel standards; (5) heavy-duty gasoline and diesel highway vehicles standard; (6) large nonroad diesel engines rule; (7) nonroad spark ignition engines and recreational engines standard; (8) point source emission reductions; (9) Air Products and Chemicals –21–157–00009; (10) reasonably available control measures, (11) maximum available control technology; (12) NO_X SIP Call; (13) Clean Air Interstate Rule (CAIR); [2] (14) several control programs to reduce area source emissions from aerosol coatings, architectural and industrial maintenance coatings, and commercial/consumer products; (15) non-highway mobile source reductions; and (16) emissions standards for small and large spark-ignition engines, locomotives and land based diesel engines.

There are no sources subject to CAIR or the NO_X SIP Call in the Paducah Area. Hence the recent remand of CAIR does not impact the maintenance inventories or maintenance demonstration in any way. Further, the Paducah Area was in attainment prior to implementation of these rules. Hence any contribution to the reduction in the background ozone levels from these rules will be in addition to the projected decreases within the maintenance planning area. These rules are included in the discussion of the maintenance plan because, even though the submittal takes no credit for them, they are expected to reduce transported NO_X and ozone from outside the nonattainment area, providing a further, unquantified improvement in the Area's air quality.

(c) *Ambient Air Quality Monitoring.* The table below shows design values [3] for the Paducah Area. The ambient ozone monitoring data was collected at sites that were selected with assistance from EPA and are considered to be representative of the area of highest concentration.

There is one monitor in Livingston County in the Paducah Area. Marshall County does not have a monitor. For the Livingston County monitor, no design values exceeding the 1997 0.08 ppm standard occurred in recent years and it is anticipated that the monitor will remain at the current location, unless otherwise allowed to be removed in consultation with EPA and in accordance with the 40 CFR part 58.

[1] The emissions estimates in this table were provided by Kentucky on July 15, 2009, through John Lyons, Director, Division of Air Quality, as an update to emissions estimates provided in the May 25, 2007, submittal.

[2] Despite the legal status of CAIR as remanded, many facilities have already or are continuing with plans to install emission controls that may benefit Kentucky areas.

[3] The air quality design value at a monitoring site is defined as that concentration that when reduced to the level of the standard ensures that the site meets the standard. For a concentration-based standard, the air quality design value is simply the standard-related test statistic. Thus, for the primary and secondary ozone standards, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration is also the air quality design value for the site. 40 CFR Part 50, Appendix I, Section 3.

See, Wegman Memorandum, pages 4 and 5.

TABLE 2—DESIGN VALUES FOR 8-HOUR OZONE (PPM)

Year	Paducah area
	Livingston County
2000–2002	0.084
2001–2003	0.084
2002–2004	0.080
2003–2005	0.075
2004–2006	0.072
2005–2007	0.074
2006–2008	0.071

Based on the Table above, each of the three-year average available design values demonstrates attainment of the 1997 ozone NAAQS. Further, these design values indicate that the Paducah Area is expected to continue attainment of the 1997 ozone NAAQS. The attainment level for the 1997 8-hour ozone standard is 0.08 ppm, effectively 0.084 ppm with the rounding convention. However, in the event that a design value at Livingston County monitoring site exceeds the 1997 ozone standard, the contingency plan included in the Kentucky's maintenance plan submittal includes contingency measures which will be promptly implemented in accordance with the contingency plan, discussed below.

(d) *Contingency Plan.* In accordance with 40 CFR 51.905(a)(4)(ii) and the Wegman Memorandum, the section 110(a)(1) maintenance plan includes contingency provisions to promptly correct a violation of the 1997 ozone NAAQS that may occur. In this maintenance plan, if contingency measures are triggered by a violation of the 1997 8-hour ozone NAAQS, Kentucky is committing to adopt one or more of the contingency measures listed below within nine months following the trigger, and implement the measures within eighteen months following the trigger. The contingency measures include: (1) Implementation of a program to require additional emissions reductions on stationary sources; (2) requirement for Stage I Vapor Recovery; (3) requirement of Stage II Vapor Recovery; (4) further restrictions on open burning during summer ozone season; (5) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles; (6) trip-reduction ordinances; (7) employer-based transportation management plans, including incentives; (8) programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration, particularly during periods of peak use; and (9) programs for new construction and major reconstructions of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

The maintenance plan also includes two additional triggers (which would occur prior to a violation of the 1997 8-hour ozone NAAQS) for an evaluation of existing control measures to see if any further emission reduction measures should be implemented at that time. These triggers are an exceedance of the NAAQS in any portion of the maintenance area or a ten percent or greater increase in emissions of either VOC or NO_X, based on the 2002 emissions inventory and periodic emission inventory updates. If either of these triggers occurs, Kentucky commits to evaluating existing control measures to see if any further emission reduction measures should be implemented.

EPA proposes to find that these contingency measures and schedules for implementation satisfy EPA's guidance on the requirements of section 110(a)(1) of continued attainment. Continued attainment of the 1997 8-hour ozone NAAQS in the Paducah Area will depend, in part, on the air quality measures discussed previously (see section II). In addition, Kentucky commits to verifying the 1997 8-hour ozone status in each maintenance plan through annual and periodic evaluations of the emissions inventories. In the annual evaluations, Kentucky will review VOC and NO_X emission data from stationary point sources. During the periodic evaluations (every three years), Kentucky will update the emissions inventory for all emissions source categories, and compare the updated emissions inventory data with actual 2005 and 2008, and projected 2011, 2014, 2017 and 2020 attainment emissions inventories to verify continued attainment of the 1997 8-hour ozone standard.

III. Proposed Action

Pursuant to section 110(a)(1) of the CAA, EPA is proposing to approve the maintenance plan addressing the 1997 8-hour ozone standard for the Paducah Area, which was submitted by Kentucky on May 27, 2008, as updated in a July 15, 2009, submission, and which ensures continued attainment of the 1997 8-hour ozone NAAQS through the year 2020. EPA has evaluated the Commonwealth's submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations, and is consistent with EPA policy.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed 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 proposed action:

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

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

costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: December 22, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–31170 Filed 12–31–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 75, No. 1

Monday, January 4, 2010

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 COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Information for Share Transfer in the Wreckfish Fishery.

OMB Control Number: 0648–0262.

Form Number(s): NA.

Type of Request: Regular submission.

Number of Respondents: 4.

Average Hours per Response: 15 minutes.

Burden Hours: 1.

Needs and Uses: The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is requesting the extension of the wreckfish share transfer data collection program. The individual transferable quota system in the wreckfish fishery is based on percentage shares. Persons holding shares may sell or otherwise transfer them to others, but information about the proposed transfer must first be provided to NOAA. The transfer form is printed on the back of the percentage shares certificate. With each transfer of ownership, the certificate will be reissued. The certificate identifies the seller, but the buyer's name, address, corporate (employer's) Federal tax identification number, and telephone number must be provided. The sale price is necessary for economic analysis. The signatures of buyer, seller, and witness will secure the transaction.

The information is needed for management of the quota system and for economic analyses. The Magnuson-Stevens Fishery Conservation and Management Act is the legislative authority to collect data from the various sectors of the economy that harvest marine resources in the exclusive economic zone.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: December 29, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–31179 Filed 12–31–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Framework Adjustment 4 to the Monkfish Fishery Management Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 5, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Allison McHale, (978) 281–9103 or *Allison.McHale@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration's (NOAA), National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource. Thus, as regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has promulgated rules for the issuance and use of a Vessel Monitoring System (VMS) and to obtain fishery-dependent data to monitor, evaluate, and enforce fishery regulations.

The Monkfish FMP contains a provision that enables limited access monkfish vessels fishing in the Northern Fishery Management Area (NFMA) to change their days-at-sea (DAS) declaration through their VMS from a Northeast (NE) multispecies Category A DAS to a monkfish DAS while at sea, i.e., before crossing the VMS demarcation line upon the vessel's return to port or leaving the NFMA. The information gathered from a vessel's declaration of a monkfish DAS in the NFMA enables NMFS to monitor the overall fishing effort, in the form of monkfish DAS usage, being directed on the monkfish resource within this management area, and is also used in ongoing analyses of the type of management actions needed to effectively manage monkfish stocks. This information is also used by NMFS to monitor DAS usage by limited access

monkfish vessels fishing in the NFMA to determine if these vessels have exceeded their annual allocation of monkfish DAS.

II. Method of Collection

All information is submitted electronically through VMS units.

III. Data

OMB Control Number: 0648–0561.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 450.

Estimated Time per Response: 5 minutes per VMS declaration.

Estimated Total Annual Burden Hours: 1,158.

Estimated Total Annual Cost to Public: $6,975.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 29, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–31178 Filed 12–31–09; 8:45 am]

BILLING CODE 3510–22–P

U.S. DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Order No. 1655

Expansion of Foreign-Trade Zone 17, Kansas City, Kansas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 17, submitted an application to the Board for authority to expand FTZ 17 in the Kansas City, Kansas, area, adjacent to the Kansas City Customs and Border Protection port of entry (FTZ Docket 16–2009, filed 4/13/2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 17953–17954, 4/20/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 17 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, this 18th day of December 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–31190 Filed 12–31–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* January 4, 2010.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–351–838	731–TA–1063	Brazil	Frozen Warmwater Shrimp	Brandon Farlander (202) 482–0182
A–570–893	731–TA–1064	China	Frozen Warmwater Shrimp	Brandon Farlander (202) 482–0182

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–533–840 ...	731–TA–1066	India	Frozen Warmwater Shrimp	Brandon Farlander (202) 482–0182
A–549–822 ...	731–TA–1067	Thailand	Frozen Warmwater Shrimp	Brandon Farlander (202) 482–0182
A–552–802 ...	731–TA–1068	Vietnam	Frozen Warmwater Shrimp	Brandon Farlander (202) 482–0182

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/*. All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 18, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–31177 Filed 12–31–09; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

Manufacturing & Services' Sustainable Manufacturing Initiative; Update

ACTION: Notice and request for input on proposed new areas of work for the Sustainable Manufacturing Initiative which could include a series of events nationwide.

SUMMARY: The International Trade Administration's (ITA) Manufacturing & Services Unit held a *Sustainability and U.S. Competitiveness Summit* on October 8, 2009. Manufacturing & Services is notifying the public of outcomes of this summit and requesting input on next steps.

DATES: Submit comments no later than 30 days after publication date of this notice.

ADDRESSES: Address all comments concerning this notice to the Sustainable Manufacturing Initiative, U.S. Department of Commerce, Room 2213, 1401 Constitution Ave., NW., Washington, DC 20230 (or via the Internet at *susmanuf@mail.doc.gov*).

FOR FURTHER INFORMATION CONTACT: William McElnea, Manufacturing & Services' Office of Trade Policy Analysis, 202–482–2831.

SUPPLEMENTARY INFORMATION: ITA's Manufacturing and Services (MAS) unit received a great deal of constructive feedback from individual U.S. firms at its October 8, 2009 *Sustainability and U.S. Competitiveness Summit*. More than 120 representatives from private industry, industry associations, non-governmental organizations, academia and major federal agencies attended the all-day event to: (1) Discuss the accomplishments of the Department's Sustainable Manufacturing Initiative (SMI); (2) discuss the sustainable manufacturing-related challenges facing U.S. industry; and (3) identify possible areas of future SMI work.

Individual participants indicated that the U.S. government must remain engaged in the area of sustainable business in order to help increase American competitiveness through implementation of manufacturing and

services practices that are cost-effective and environmentally sound. MAS has formulated tentative ''next steps'' based in part on the individual feedback received at the Summit and feedback from public and private sector stakeholders that the agency continues to receive. As the Department moves forward in this arena in collaboration with other relevant federal government agencies, it will keep in mind several over-arching issues voiced at the Summit:

- In these tough economic times, U.S. companies need easy access to federal programs and resources that can help them stay in business and maintain profitability;
- There is a need for constant evaluation and engagement with stakeholders on what constitutes the most appropriate role for the federal government in addressing U.S. industry's sustainability needs and challenges (e.g., facilitation vs. direct action);
- Stakeholders face general uncertainty, unease, and in some cases confusion regarding all of the competing sustainability-related product and process information, data, metrics and standards (domestic and international); and,
- There is a desire for a common sustainability ''language'' and framework to increase interoperability between firms and industries.

Taking into account individual feedback received at the Summit, the input Commerce continues to receive, and being mindful of the over-arching issues above, MAS proposes the following tentative ''next steps'' to address U.S. industry's sustainability needs:

1. Expanding Outreach of Commerce and U.S. Government Resources That Support Sustainable Business

Phase 1 of MAS's Sustainable Business Clearinghouse design and operability is complete. Accessed here, *www.manufacturing.gov/sustainability*, the Clearinghouse currently contains links to all major federal government programs that support sustainable business.

Next Steps: MAS will implement Phase 2 which involves inclusion of state-level information in the Clearinghouse, coupled with a more aggressive industry outreach plan aimed at widely advertising both the Clearinghouse and its many programs to U.S. firms across the country.

2. Utilizing the Sustainable Manufacturing American Regional Tours (SMART) Model To Achieve Greater Industry Specificity

The SMART program has been effective at closing the familiarity gap among U.S. manufacturers on the benefits of sustainable manufacturing and business practices. To date, five SMARTs have been held across the country (St. Louis, MO; Grand Rapids, MI; Rochester, NY; Seattle, WA; and Columbus, OH) in which over 100 companies have learned first-hand about the cost-effectiveness of greater natural resource efficiency and waste minimization. The SMI team proposes to utilize this model to accomplish greater industry specificity.

Next Steps: Commerce will hold industry-specific SMARTs and facilitate industry discussions via SMART-like events that identify specific sustainability challenges in a selected sector as well as ways to address these challenges.

3. The Creation of Metrics for Sustainable Manufacturing

The SMI team's primary effort on metrics for sustainable manufacturing is focusing on a Commerce-initiated study in the Organization for Economic Cooperation and Development (OECD) that will result in a ''toolkit'' of metrics for companies to use to help them assess and then measure the benefits of implementing sustainable manufacturing practices. Commerce has been working to ensure this study will result in a toolkit that is useful to both large and small U.S. companies. The study has entered its final phase and the U.S. government is optimistic that the toolkit will be ready for use sometime in 2010.

Next Steps: Commerce will successfully guide completion of the OECD study through active participation in the Advisory Expert Group. Commerce will facilitate greater engagement with the private sector to determine the appropriate role of the federal government in establishing useful, comparable sustainable manufacturing metrics for industry.

4. Information and Analysis of Legislation/Regulations Related to Environment and Health

At the October 8 Summit, private sector representatives were particularly concerned about the potential impacts of environment and health-related legislation and regulations on U.S. firms' bottom line, but few have time to follow the legislative or regulatory process, or know where to find or access information or analysis of pending legislation or new regulations.

Next Step: MAS will work internally as well as with other relevant federal government agencies to publicize legislative and regulatory information and analyses that would enhance private sector understanding of potential industry and economic impacts on business operations.

5. Sustainable Manufacturing 101

Summit participants stated that many small-to-medium sized U.S. companies are interested in producing environmentally sound, healthy products in resource-efficient ways, but are unfamiliar with sustainable manufacturing practices and the potential scope of these practices. Currently, there is a lack of resources that provide basic information on sustainable manufacturing in a way that is easy to understand.

Next Step: MAS will work with its interagency group on sustainable manufacturing to develop an easy-to-follow ''Sustainable Manufacturing 101'' training module that companies can use to begin the process of considering sustainable manufacturing practices in their own facilities. The online training could be a companion piece to the Clearinghouse, helping to teach basic concepts and terminology and tying concepts to programs and resources available through the Clearinghouse.

6. Addressing Increased Industry Demand for ''Green'' Skills

Summit participants expressed an ongoing and growing need for ''green'' skills, in a variety of capacities, at the workplace. Whether it be providing educational opportunities to our future engineers in the field of clean technology development or training opportunities to U.S. manufacturers in the area of remanufacturing, arming the U.S. workforce with sustainability-related skills sets will be key to maintaining our innovation-based competitive advantage in world markets.

Next Step: MAS will reach out to and work with as appropriate the Department of Labor and Department of Education in identifying the sustainability-related skill demands of U.S. industry and provide input on the various ''green'' skill-focused workforce development and educational initiatives launched by these agencies.

7. Conducting Sector-Specific Analyses of U.S. Industry Sustainability Challenges and Opportunities

To comprehensively address the myriad challenges U.S. firms face in

their efforts to enhance natural resource efficiency, minimize waste, and compete in world markets, public and private sector stakeholders require a better collective understanding of these challenges and ways these can be addressed. Thus, there is a need for more in-depth analyses that can educate these stakeholders on where significant challenges and opportunities for enhanced profitability lie.

Next Step: MAS will launch a ''Sustainable Manufacturing Sector Focus Study'' series aimed at informing public and private sector stakeholders about the specific sustainability-related challenges, ongoing efforts, and unrealized opportunities that exist in specific U.S. manufacturing sectors. These studies would be designed to provide clarity on the specific hurdles U.S. firms are facing in their efforts to become more resource efficient, what firms are doing to overcome these hurdles, potential cost-saving and value-adding opportunities that exist in a selected sector, and unexplored areas of public-private collaboration.

Dated: December 18, 2009.

Matthew Howard,

Office of Trade Policy Analysis.

[FR Doc. E9–31188 Filed 12–31–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS41

Marine Mammals; File No. 87–1851–02

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Daniel P. Costa, Ph.D., University of California at Santa Cruz, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA has been issued a major amendment to Permit No. 87–1851–01.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, Ph.D., (301) 713–2289.

SUPPLEMENTARY INFORMATION: On October 20, 2009, notice was published in the **Federal Register** (74 FR 53719) that a request for an amendment to Permit No. 87–1851–01 to conduct research on Antarctic pinnipeds had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 87–1851–02 authorizes the permit holder to expand the geographic range where research is conducted in Antarctica to include the Ross Sea, and to increase the number of Weddell seals (*Leptonychotes weddellii*) captured, sedated, tagged, and sampled from 10 animals per year to 40 animals per year. Permit No. 87–1851–02 expires on January 31, 2012.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 28, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–31191 Filed 12–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C., App.), notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, February 2, 2010, from 8:30 a.m. to 5 p.m. and Wednesday, February 3, 2010, from 8:30 a.m. to 11:30 a.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST, a presentation on the strengthened NIST role in documentary standards, an overview of the NIST organizational structure, a discussion on future VCAT meeting topics, preparation and feedback sessions on draft recommendations for the 2009 VCAT Annual Report, and laboratory tours. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm*.

DATES: The VCAT will meet on Tuesday, February 2, 2010, from 8:30 a.m. to 5 p.m. and Wednesday, February 3, 2010, from 8:30 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1060, telephone number (301) 975–2667. Ms. Shaw's e-mail address is *stephanie.shaw@nist.gov*.

SUPPLEMENTARY INFORMATION: Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On February 2, 2010, approximately one-half hour will be reserved in the afternoon for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm*. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated

on the agenda, and those who were unable to attend in person are invited to submit written statements to the VCAT, National Institute of Standards and Technology, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland 20899, via fax at 301–216–0529 or electronically by e-mail to *gail.ehrlich@nist.gov*.

All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Stephanie Shaw no later than Friday, January 29, 2010, and she will provide you with instructions for admittance. Ms. Shaw's e-mail address is *stephanie.shaw@nist.gov* and her phone number is (301) 975–2667.

Dated: December 22, 2009.

Marc Stanley,

Acting Deputy Director.

[FR Doc. E9–31152 Filed 12–31–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–67 and 09–72]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of two section 36(b)(1) arms sales notifications to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following are copies of letters to the Speaker of the House of Representatives, Transmittals 09–67 and 09–72 with associated attachments.

Dated: December 29, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Transmittal No. 09–67

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–67 with attached transmittal, and policy justification.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 22 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-67, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $119 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-67

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$ 19 million
Other	$100 million
TOTAL	$119 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: logistics support and training for 12 C-130J-30 aircraft being procured through a Direct Commercial Sale, 12 AN/AAR-47 Missile Approach Warning Systems, 12 AN/ALE-47 Countermeasure Dispenser Sets, 12 AN/ALR-56M Radar Warning Receivers, communication equipment, navigation equipment, aircraft ferry and refueling support, spare and repair parts, support and test equipment, publications and technical documentation, mission planning systems, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and related elements of logistical and program support.

(iv) Military Department: Air Force (QAB)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex Attached

(viii) Date Report Delivered to Congress: 22 Dec 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates – Logistics support and training for 12 C-130J-30 Aircraft

The Government of the United Arab Emirates has requested a possible sale of logistics support and training for 12 C-130J-30 aircraft being procured through a Direct Commercial Sale, 12 AN/AAR-47 Missile Approach Warning Systems, 12 AN/ALE-47 Countermeasure Dispenser Sets, 12 AN/ALR-56M Radar Warning Receivers, communication equipment, navigation equipment, aircraft ferry and refueling support, spare and repair parts, support and test equipment, publications and technical documentation, mission planning systems, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and related elements of logistical and program support. The estimated cost is $119 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a critical and key partner/ally, which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will provide the United Arab Emirates the capability to transport equipment and troops in the region, and support U.S. and NATO airlift requirements in Afghanistan.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed-Martin of Bethesda, Maryland. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor representatives to the United Arab Emirates.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-67

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/ALR-56M Radar Warning Receiver (RWR) is designed to detect incoming radar signals, identify and characterize those signals to a specific threat, and alert the aircrew through the Tactical Electronic Warfare System display. The system consists of external antennae mounted on the fuselage and wingtips. The solid state ALR-56 is based on a digitally-controlled, dual channel receiver that scans within a specific frequency spectrum and is capable of adjusting to threat changes by modifications to the software. The RWR will not be provided with In Country Reprogramming capability. Hardware is Unclassified. Software is Secret. Technical data and documentation to be provided is Unclassified.

2. The AN/AAR-47 Missile Approach Warning System warns of threat missile approach by detecting radiation associated with the rocket motor and automatically initiates flare ejection. The AN/AAR-47 is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (CI). The set of OSC units, normally four, is mounted on the aircraft exterior to provide omni-directional protection. The OSC detects the rocket plume of missiles and sends appropriate signals to the CP for processing. The CP analyzes the data from each OSC and automatically deploys the appropriate countermeasures. The CP also contains comprehensive Built-in-Test (BIT) circuitry. The CI displays the incoming direction of the threat so that the pilot can take appropriate action. Hardware is Unclassified. Software is Secret. Technical data and documentation to be provided is Unclassified.

3. The AN/ALE-47 Countermeasure Dispenser Set (CMDS) provides an integrated threat-adaptive, computer controlled capability for dispensing chaff, flares, and active radio frequency expendables. The AN/ALE-47 system enhances aircraft survivability in sophisticated threat environments. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board Electronic Warfare (EW) and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. Hardware is Unclassified. Software is Secret. Technical data and documentation to be provided is Unclassified.

4. The AN/ARC-210 (RT-1794C) HAVE QUICK I/II Single Channel Ground and Airborne Radio Systems (SINCGARS) offers two-way secure, jam-resistant, voice and data communications via line-of-sight or satellite communications links in the very high frequency (VHF) and ultra high frequency (UHF) spectra. The system provides frequency hopping and 8.33kHz capabilities and contains embedded communication security products. Hardware is Unclassified. Software is Unclassified. Technical data and documentation to be provided is Unclassified.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware in the proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 09–72

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–72 with attached transmittal, policy justification, and Sensitivity of Technology.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 2 2 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No.09-72, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $290 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-72

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$252 million
Other	$ 38 million
TOTAL	$290 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 400 GBU-24(V) 11/B Enhanced PAVEWAY III, 400 GBU-24(V) 12/B Enhanced PAVEWAY III, 400 GBU-49(V) 3/B Enhanced PAVEWAY II, 400 GBU-50(V) 1/B Enhanced PAVEWAY II, 800 MK-84 2000 pound Bombs, 400 MK-82 500 pound Bombs, 400 BLU-109/B 2000 pound Bombs. Also included are containers, bomb components, mission planning software, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel support services, and other related elements of program support.

(iv) Military Department: Air Force (YAC, Amendment #2)

(v) Prior Related Cases, if any:
FMS case YAB - $179M - 20Aug02
FMS case YAC (Amd #1) - $700M – 27Nov08
FMS case QAA - $39M – 24Mar09

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 22 Dec 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates – Enhanced Guided Bomb Units

The Government of the United Arab Emirates (UAE) has requested a possible sale of 400 GBU-24(V) 11/B Enhanced PAVEWAY III, 400 GBU-24(V) 12/B Enhanced PAVEWAY III, 400 GBU-49(V) 3/B Enhanced PAVEWAY II, 400 GBU-50(V) 1/B Enhanced PAVEWAY II, 800 MK-84 2000 lbs Bombs, 400 MK-82 500 lbs Bombs, 400 BLU-109/B 2000 lbs Bombs. Also included are containers, bomb components, mission planning software, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel support services, and other related elements of program support. The estimated cost is $290 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a critical and key partner, which has been, and continues to be, an important force for political stability and economic progress in the Middle East. This proposed sale supports the prior sale of the Block 60 F-16s to the UAE.

The proposed sale of the weapons will strengthen the effectiveness and interoperability of a potential coalition partner, reduce the dependence on U.S. forces in the region, and enhance any coalition operations the U.S. may undertake. The UAE will have no difficulty absorbing these additional munitions into its armed forces. The proposed sale of these weapon systems will not alter the basic military balance in the region.

The principal contractors are the Raytheon Corporation of Waltham, Massachusetts, and McAlester Army Ammunition Plant of McAlester, Oklahoma. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of additional U.S. Government or contractor representatives to the UAE. The number of U.S. Government and contractor representatives required in UAE to support the program will be determined in joint negotiations as the program proceeds through the development, production, and equipment installation phase.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-72

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The GBU-49 and GBU-50 are 500lbs/2000lbs dual mode laser and Global Positioning System (GPS) guided munitions. Information revealing target designation tactics and associated aircraft maneuvers, the probability of destroying specific/peculiar targets, vulnerabilities regarding countermeasures and the electromagnetic environment is classified Secret. Information revealing the probability of destroying common/unspecified targets, the number of simultaneous lasers the laser seeker head can discriminate, and data on the radar/infra-red frequency is classified Confidential.

2. The GBU-24 Enhanced PAVEWAY III Guided Bomb Unit is a low level laser and GPS-guided munition that can be employed at high and low altitudes with terminal impact angle improvements of the GBU-49/50 series. Design improvements include proportional navigation, increased terminal accuracy, off-axis release envelopes, trajectory shaping, and target re-acquisition capability. Information revealing target designation tactics and associated aircraft maneuvers, the probability of destroying specific/peculiar targets, vulnerabilities regarding countermeasures and the electromagnetic environment is classified Secret. Information revealing the probability of destroying common/unspecified targets, the number of simultaneous lasers the laser seeker head can discriminate, and data on the radar/infra-red frequency is classified Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware in the proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E9–31159 Filed 12–31–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–54, 09–61, 09–63, 09–68, 09–71 and 09–78]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of six section 36(b)(1) arms sales notifications to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following are copies of letters to the Speaker of the House of Representatives, Transmittals 09–54, 09–61, 09–63, 09–68, 09–71 and 09–78 with associated attachments.

Dated: December 28, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Transmittal No. 09–54

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–54 with attached transmittal, policy justification, and Sensitivity of Technology.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 17 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-54, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost $145 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-54

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 95 million
Other	$ 50 million
TOTAL	$145 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 20 RGM-84L/3 HARPOON Block II Anti-Ship Cruise Missiles, 4 AN/SWG-1A HARPOON Shipboard Command Launch Control Systems including all consoles, software, and shipboard canister launcher units (4 missile battery), spare and repair parts; supply/technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support.

(iv) Military Department: Navy (LFK)

(v) Prior Related Cases, if any: numerous cases dating back to 1985

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: DEC 17 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – Harpoon Block II Anti-Ship Cruise Missiles

The Government of Egypt has requested a possible sale of 20 RGM-84L/3 HARPOON Block II Anti-Ship Cruise Missiles, 4 AN/SWG-1A HARPOON Shipboard Command Launch Control Systems including all consoles, software, and shipboard canister launcher units (4 missile battery), spare and repair parts; supply/technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support. The estimated cost is $145 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt intends to use the HARPOON missiles and launch systems on upgraded S-148 Tiger Class Patrol Boats which will assist in modernizing its fleet and consolidate the configuration of the surface-to-surface missiles within its inventory. Egypt will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be The Boeing Company in St. Louis, MO. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. government or contractor representatives to Egypt; however, U.S. government and contractor representatives will be required to travel to Egypt annually for a period of one to two weeks to participate in program and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-54

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The HARPOON Block II missile (A/R/UGM-84L) is an air, ship and submarine launched Anti-Surface Warfare (ASuW) missile that provides Naval forces with a capability to engage targets in both the "blue water" regions and the littorals of the world. The A/R/UGM-84L missiles, including Launch and Launcher Control System (AN/SWG-1A – HSCLCS), publications, documentation, operations, supply, maintenance, and training to be conveyed with this proposed sale have the highest classification level of Confidential.

2. The HARPOON Missile (A/R/UGM-84L) and the HARPOON Shipboard Command Launch Control System (HSCLCS - AN/SWG-1A (11/12)) incorporate components, software, and technical design information that are considered sensitive. These elements are essential to the ability of the HARPOON missile to selectively engage hostile targets under a wide range of operational, tactical and environmental conditions. With respect to GPS and the HARPOON Weapon System, Egypt has been approved for Standard Positioning Service (SPS) GPS. Additionally, this customer is not approved for Coastal Target Suppression (CTS) and this capability will not be provided.

The following HARPOON missile and launch system components being conveyed by the proposed sale that are considered sensitive and are classified Confidential include:

a. The Radar seeker
b. The GPS/INS System
c. Operational Flight Program (OFP) Software
d. Missile operational characteristics and performance data
e. Classified Missile Coefficients
f. HARPOON Weapon Control Console; with the Weapon Control Indicator Panel

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 09–61

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–61 with attached transmittal, policy justification, and Sensitivity of Technology.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 17 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-61, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $501 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-61

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$ 3 million
Other	$498 million
TOTAL	$501 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: logistics support and training for four (4) C-17 Globemaster III aircraft being procured through a Direct Commercial Sale, 5 AN/AAR-47 Missile Warning Systems, 10 AN/ARC-210 (RT-1794C) HAVE QUICK II Single Channel Ground and Airborne Radio Systems, 5 AN/ALE-47 Countermeasure Dispensing Sets, aircraft ferry and fuel support, communication and navigation equipment, spare and repair parts, support and test equipment, publications and technical documentation, maintenance, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, preparation of aircraft for shipment, and other related elements of logistics support.

(iv) Military Department: Air Force (QAC)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex Attached

(viii) Date Report Delivered to Congress: DEC 17 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates – Logistics Support for C-17 Globemaster Aircraft

The Government of the United Arab Emirates has requested a possible sale of logistics support and training for four (4) C-17 Globemaster III aircraft being procured through a Direct Commercial Sale, 5 AN/AAR-47 Missile Warning Systems, 10 AN/ARC-210 (RT-1794C) HAVE QUICK II Single Channel Ground and Airborne Radio Systems, 5 AN/ALE-47 Countermeasure Dispensing Sets, ferry support, communication and navigation equipment, spare and repair parts, support and test equipment, publications and technical documentation, maintenance, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, preparation of aircraft for shipment, and other related elements of logistics support. The estimated cost is $501 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a critical and key partner/ally, which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will provide the United Arab Emirates (UAE) the capability to transport equipment and troops in the region, as well as, to support U.S. and NATO airlift requirements in Afghanistan.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be the Boeing Company of Chicago, Illinois. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of additional U.S. Government and contractor representatives to the UAE. The number required will be determined in joint negotiations as the program proceeds through the development, production, and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-61

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/ALE-47 Countermeasures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares, and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery, radar command-guided missiles, radar homing guided missiles, and infrared guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board electronic warfare and avionics systems. CMDS uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. The hardware is Unclassified. The software is classified Secret. Technical data and documentation to be provided is Unclassified.

2. The AN/AAR-47 missile warning system is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as, audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (CI). The set of OSC units, which normally consist of four, is mounted on the aircraft exterior to provide omni-directional protection. The OSC detects the rocket plume of missiles and sends appropriate signals to the CP for processing. The CP analyzes the data from each OSC and automatically deploys the appropriate countermeasures. The CP also contains comprehensive BIT circuitry. The CI displays the incoming direction of the threat, so that the pilot can take appropriate action. The hardware is Unclassified. The software is classified Secret. Technical data and documentation to be provided is Unclassified.

3. The AN/ARC-210 (RT-1794C) HAVE QUICK I/II Single Channel Ground and Airborne Radio Systems (SINCGARS) offers a two-way secure, jam-resistant, voice and data communications via line-of-sight or satellite communications links in the very high frequency (VHF) and ultra high frequency (UHF) spectrum. The system provides frequency hopping and 8.33kHz capabilities and contains embedded communication security products.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 09–63

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–63 with attached transmittal, policy justification, and Sensitivity of Technology.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 16 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-63, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $177 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-63

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 177 million
Other	$ 0 million
TOTAL	$ 177 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 2,742 BGM-71E-4B-RF Tube-Launched, Optically-Tracked, Wire-Guided (TOW-2A) Radio Frequency missiles (42 missiles are for lot acceptance testing), publications and technical documentation, and other related elements of logistics support.

(iv) Military Department: Army (ZAD)

(v) Prior Related Cases, if any: numerous cases dating back to 1973

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex

(viii) Date Report Delivered to Congress: 16 December 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - SANG Modernization Program

The Government of Saudi Arabia has requested a possible sale for 2,742 BGM-71E-4B-RF Tube-Launched, Optically-Tracked, Wire-Guided (TOW-2A) Radio Frequency missiles (42 missiles are for lot acceptance testing), publications and technical documentation, and other related elements of logistics support. The proposed sale will support efforts to modernize the Saudi Arabian National Guard (SANG). The estimated cost is $177 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The SANG Modernization Program is an evolution of the SANG as an effective defensive force with the advice, assistance, and training of the U.S. Army. The proposed sale will improve Saudi Arabia's capability to meet and defeat current and future threats from enemy armored vehicles created by the development and fielding of first- and second- generation explosive reactive armor. Saudi Arabia will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Saudi Arabia, which already has previous TOW missile variants in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be the Raytheon Corporation in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-63

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The TOW 2A Radio Frequency (RF) missile (BGM-71E-4B-RF) is a direct attack missile designed to defeat armored vehicles, reinforced urban structures, field fortifications, and other such targets. TOW missiles are fired from a variety of TOW launchers in the U.S. Army, USMC, and FMS customer forces. The TOW 2A RF missile can be launched from the same launcher platforms as the existing wire-guided TOW 2A missile without modification to the launcher. The TOW 2A missile (both wire and RF) contains two tracker beacons (xenon and thermal) for the launcher to track and guide the missile in flight. Guidance commands from the launcher are provided to the missile by the RF link contained within the missile case. The hardware, software, and technical publications provided with the sale thereof are unclassified. However, the system itself contains sensitive technology that instructs the system on how to operate in the presence of countermeasures.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 09–68

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–68 with attached transmittal, and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 17 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-68, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Egypt for defense articles and services estimated to cost $750 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-68

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$750 million
TOTAL	$750 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Modification and installation of part kits to upgrade 156 F-110-GE-100 engines through the Service Life Extension Program (SLEP). The upgrades will be spread out over the next six to seven years in increments of approximately 24 engines being upgraded each year. Also included: transportation, spare and repair parts, support equipment, publications and technical documentation, U.S. Government and contractor technical support, and other related elements of program support.

(iv) Military Department: Air Force (QAS, Amendment #1)

(v) Prior Related Cases, if any: FMS case QAS-$40M-15May09

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: DEC 17 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – Service Life Extension Program for F-110-GE-100 Engines

The Government of Egypt has requested a possible sale of modification and installation of part kits to upgrade 156 F-110-GE-100 engines through the Service Life Extension Program (SLEP). The upgrades will be spread out over a six to seven year period in increments of approximately 24 engines being upgraded each year. Also included: transportation, spare and repair parts, support equipment, publications and technical documentation, U.S. Government and contractor technical support, and other related elements of program support. The estimated cost is $750 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt will use these engine upgrades to enable continued operation of its current F-16 fleet, ensuring the Egyptian Air Force's (EAF) capability to train with U.S. and coalition forces. The upgrades will allow the EAF to continue defending Egypt's national security and protecting its borders. Egypt will have no difficulty absorbing these upgrades into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be General Electric Aviation of Cincinnati, Ohio. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale requires the assignment of five additional contractor representatives to Egypt for a period of six years to provide training and technical assistance.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

BILLING CODE 5001–06–C

Transmittal No. 09–71

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–71 with attached transmittal, policy justification, and Sensitivity of Technology.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 17 2008

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-71, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost $240 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-71

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 40 million
Other	$ 200 million
TOTAL	$ 240 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: The Fast Missile Craft (FMC) program was previously reported under Congressional notifications 04-05 and 0C-08. This notification is to document the Government of Egypt's decision to expand the program from three (3) FMCs to four (4) FMCs, one (1) additional OTO-Malera 76mm/62 caliber Super Rapid Fire Dual Purpose guns, one (1) additional MK 31 Mod 3 Rolling Airframe Missile Guided Missile Weapon Systems, installation of Hull, Mechanical, and Electrical equipment, communications, operations equipment, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documents, and U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (SBU, Amendment #2)

(v) Prior Related Cases, if any:
FMS case SBU-$528M-15Oct04
FMS case ACN-$71M-11Mar03
FMS case ACP-$83M-14Dec07
FMS case LDU-$37M-10Jul02
FMS case LDT-$18M-28Mar01

vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: DEC 17 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – Fast Missile Craft

The Government of Egypt has requested a possible sale for the Fast Missile Craft (FMC) program which was previously reported under Congressional notifications 04-05 and 0C-08. This notification is to document the Government of Egypt's decision to expand the program from three (3) FMCs to four (4) FMCs including the following; one (1) additional OTO-Malera 76mm/62 caliber Super Rapid Fire Dual Purpose guns, (1) additional MK 31 Mod 3 Rolling Airframe Missile (RAM) Guided Missile Weapon System, installation of Hull, Mechanical, and Electrical equipment, communications, operations equipment, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documents, and U.S. Government and contractor technical and logistics support services, and other related elements of logistics support. The estimated cost is $240 million.

The sale of Fast Missile Craft to Egypt was originally notified on 7 August 2004, in Transmittal 04-05 for three FMCs at a value of $565M. On 7 September 2008, the Administration notified an inflationary cost increase to that program in Transmittal OC-08, for an additional $485M. This notification of $240M brings the total notified value of the FMC program to $1.290B.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East. This sale is consistent with these U.S. objectives and with the 1950 Treaty of Mutual Cooperation and Security.

The Egyptian Navy does not currently have a modern, high speed, ship capable of providing deep and shallow water defensive protection for the approaches to the Suez Canal. Egypt intends to purchase these ships to enhance its overall ability to defend its coastal areas and the approaches to the Suez Canal and will have no difficulty absorbing these crafts into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

This document contains information exempt from mandatory disclosure under the Freedom of Information Act (FOIA).

The prime contractor will be Vision Technology Halter-Marine of Gulfport Mississippi.

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-71

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Fast Missile Craft is a design to specification high speed (33+ kts), 75 meter Corvette sized ship. Its hull design is based on existing commercially available designs manufactured by the prime contractor Vision Technology Halter Marine. Primary installed Hull Mechanical & Electrical systems are all commercially available non-U.S. Navy inventory items. Design and manufacture of this ship will not include sensitive or classified technology. Because the platform is not in the U.S. Navy's inventory it is defined as Significant Military Equipment rather than Major Defense Equipment. The installed command and control equipment, sensors, communications and Electronic Support Measures (ESM)/Electronic Counter-measures (ECM) will be commercially available non-U.S. Navy inventory equipment. Parametric performances of the ESM/ECM system will be governed by existing export controls promulgated by Defense Technology Security Agency. No classified data or threat libraries will be transferred with this equipment.

2. There will be installed weapon systems identified as U.S. Navy cognizant MDE. These are the: Harpoon Block II Anti-Ship Cruise Missile; Close-In-Weapons System (CIWS); 76mm MK 75 DP Gun; and the Rolling Airframe Missile (RAM) System. Sale and Sensitivity of Technology for the Harpoon Block II and the CIWS have previously been reported in Congressional Notification 02-06.

3. There is no sensitive or classified material or data associated with the transfer to the Egyptian Navy with the sale of one (1) 76mm MK-75 Dual Purpose (DP) Guns modified to Super Rapid configuration via a modification kit.

4. The following equipment and documentation will be provided with the MK-31 RAM GMWS:

a. MK-49 MOD 3 Guided Missile Launching Systems
   MK-447 MOD 0 Weapon Control Panel
   MK 201 MOD 2 Launcher Server Control Units
   MK-144 MOD 2 Guided Missile Launchers
   Deck Station Launcher Control Junction Box
   Heater Power Transformer
   MK-69 MOD 2 Maintenance Assist Module Cabinets
   Launcher Safety Switch
b. MK-44 Guided Missile Round Pack
c. Support and Test Equipment
d. General Purpose Test Equipment
e. Publications (Maintenance, Operations and Training)
f. System Supporting Software

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

BILLING CODE 5001–06–C

Transmittal No. 09–78

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–78 with attached transmittal, and policy justification.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 17 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-78, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $360 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-78

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$360 million
TOTAL	$360 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Construction support services to provide administrative, operational, storage, support facilities and utility infrastructure for the 26th Al Soor Brigade facilities. The U.S. Army Corps of Engineers (USACE) will provide engineering, planning, design, acquisition, contract administration, construction management, and other technical services for construction of facilities and infrastructure for administration, operational equipment maintenance, logistical and base support, soldiers' living and recreational facilities, training, ranges, perimeter security, supply and storage, and utility infrastructure.

(iv) Military Department: USACE (HAY)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: DEC 17 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait - Facilities and Infrastructure Construction Support Services

The Government of Kuwait has requested a possible sale of construction support services to provide administrative, operational, storage, support facilities and utility infrastructure for the 26th Al Soor Brigade facilities. The U.S. Army Corps of Engineers (USACE) will provide engineering, planning, design, acquisition, contract administration, construction management, and other technical services for construction of facilities and infrastructure for administration, operational equipment maintenance, logistical and base support, soldiers' living and recreational facilities, training, ranges, perimeter security, supply and storage, and utility infrastructure. The estimated cost is $360 million.

This proposed sale would enhance the establishment of an all encompassing modern military facility that will serve both as a training base and a base of operations for a premier unit of the Kuwaiti Defense Force responsible for the security and stability of Kuwait. The facility scope of work is similar to other facilities built in the past by the US Army Corps of Engineers in other Middle Eastern countries, and the effort promotes the modernization and development of a Major Non-NATO ally. This proposed sale also would contribute to the foreign policy and national security of the U.S. by enhancing Kuwait's self defense capabilities and supporting the USG's efforts in coalition operations.

This proposed sale would enable Kuwait to support the operational effectiveness of its military to maintain security and stability throughout Kuwait.

The proposed sale of this infrastructure and support will not alter the basic military balance in the region.

The USACE is the principal organization that will direct and manage this program. The USACE will provide services through both in-house personnel and contract services. There are no known offset agreements proposed in connection with this potential sale.

The estimated number of U.S. Government and contractor representatives to be assigned to Kuwait to implement the provisions of this proposed sale will be determined as a result of program definitization.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E9–31086 Filed 12–31–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee Meetings

AGENCY: Civilian Personnel Management Service (Wage and Salary Division), DoD.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that the Department of Defense Wage Committee will meet in closed session on January 12 and 26, February 23, and March 9 and 23, 2010. During those meetings the Committee will receive, review, and consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

DATES: The meetings will begin at 10 a.m. on Tuesday, January 12 and 26, February 23, and March 9 and 23, 2010.

ADDRESSES: The meetings will be held at 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Jerabek, Designated Federal Officer for the Department of Defense Wage Committee; 1400 Key Boulevard, Suite A105, Arlington, Virginia 22209–5144, telephone: (703) 696–1735, fax: (703) 696–5472, or e-mail: *craig.jerabek@cpms.osd.mil.*

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of the Federal Advisory Committee Act of 1972, Public Law 92–463, it is hereby determined that every Wage Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(2) and 5 U.S.C. 552b(c)(4), and that, accordingly, the meetings will be closed to the public.

However, members of the public who wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning the meetings may be obtained by writing the chairman at: Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

The Division was unable to finalize its agenda in time to publish notice of its January 12th meeting in the **Federal Register** for the 15 calendar days required by 41 CFR 102–3.150(a). In order to meet legal effective dates, the meeting date cannot be changed. Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: December 29, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–31180 Filed 12–31–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: USAF–2009–0063]

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on February 3, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6172.

SUPPLEMENTARY INFORMATION: The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the point of contact under **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 28, 2009, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: December 29, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AETC W

SYSTEM NAME:

Air Force Institute of Technology Management and Information System (AFITMIS) (February 21, 2008, 73 FR 9548).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Air Force Institute of Technology Student Information System (AFITSIS) Records''.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Resident students, faculty, staff, distant learning students, and students attending civilian institutions.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Full name, Social Security Number (SSN), gender, race, date of birth, citizenship with country documents, mailing addresses, home and work telephone, home e-mail address, occupation, pay grade, rank, assigned unit identification code (UIC), service affiliation, government agency, course work, grades, academic program, and emergency contact information.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force: powers and duties; Air Force Instruction 36–2201, Air Force Training Program; Air Force Instruction 36–2301, Professional Military Education and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''This system integrates all aspects of student information management. It provides core functions required for resident student graduate education, management of students in civilian institution programs, and course management for civil engineering education programs. Also, provides support for registration, academic programs, course offerings, grades, education planning, candidate packages, resource scheduling, degree auditing, financial reimbursements/forecasting, and official transcript generation.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Additionally, records access is controlled by user profiles that will ensure only the data that should be accessible to that individual will appear on the screen. Access to the system is by user account and password or by the Common Access Card (CAC). Permission levels have been established on a need-to-know basis.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Communications and Information Directorate, Air Force Institute of Technology, 2950 Hobson Way, Wright-Patterson Air Force Base, Ohio 45433–7765.

Requests should include full name, Social Security Number (SSN) and any details that will assist in locating the record.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Communications and Information Directorate, Air Force Institute of Technology, 2950 Hobson Way, Wright-Patterson Air Force Base, Ohio 45433–7765.

Requests should include full name, Social Security Number (SSN) and any details that will assist in locating the record.''

* * * * *

F036 AETC W

SYSTEM NAME:

Air Force Institute of Technology Student Information System (AFITSIS) Records.

SYSTEM LOCATION:

Air Force Institute of Technology (AFIT), AFIT Communications and Information Directorate, 2950 Hobson Way, Wright-Patterson Air Force Base, OH 45433–7765.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident students, faculty, staff, distant learning students, and students attending civilian institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, Social Security Number (SSN), gender, race, date of birth, citizenship with country documents, mailing address, home and work telephone, home e-mail address, occupation, pay grade, rank, assigned unit identification code (UIC), service affiliation, government agency, course work, grades, academic program, and emergency contact information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; Air Force Instruction 36–2201, Air Force Training Program; Air Force Instruction 36–2301, Professional Military Education and E.O. 9397 (SSN), as amended.

PURPOSE(S):

This system integrates all aspects of student information management. It provides core functions required for resident student graduate education, management of students in civilian institution programs, and course management for civil engineering education programs. Also, provides support for registration, academic programs, course offerings, grades, education planning, candidate packages, resource scheduling, degree auditing, financial reimbursements/forecasting, and official transcript generation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and on electronic storage media.

RETRIEVABILITY:

Name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Additionally, records access is controlled by user profiles that will ensure only the data that should be accessible to that individual will appear on the screen. Access to the system is by user account and password or by the Common Access Card (CAC). Permission levels have been established on a need-to-know basis.

RETENTION AND DISPOSAL:

Destroy 30 years after individual completes or discontinues a training course. Computer records are destroyed by erasing, deleting or overwriting. Paper records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Communications and Information Directorate, Air Force Institute of Technology, 2950 Hobson Way, Wright-Patterson Air Force Base, Ohio 45433–7765.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Communications and Information Directorate, Air Force Institute of Technology, 2950 Hobson Way, Wright-Patterson Air Force Base, Ohio 45433–7765.

Request should include full name, Social Security Number (SSN) and any details that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Communications and Information Directorate, Air Force Institute of Technology, 2950 Hobson Way, Wright-Patterson Air Force Base, Ohio 45433–7765.

Request should include full name, Social Security Number (SSN) and any details that will assist in locating the record.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information comes from source documents such as written examinations and grade sheets; from reports by instructors and students; and from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–31157 Filed 12–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Amended Record of Decision: Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement Revised by State 12/21/09

AGENCY: Department of Energy.

ACTION: Amended Record of Decision.

SUMMARY: The U.S. Department of Energy (DOE) is amending its initial Record of Decision (ROD) published December 19, 2005 (70 **Federal Register** [FR] 75165) (2005 ROD), pursuant to the *Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement* (DOE/EIS–0287), issued in October 2002 [1] (2002 EIS). The State of Idaho was a cooperating agency in the preparation of the EIS. The DOE analyzed two sets of alternatives for accomplishing its proposed actions regarding the Idaho Nuclear Technology and Engineering Center (lNTEC) at the Idaho National Laboratory (INL, formerly known as the Idaho National Environmental and Engineering Laboratory): (1) Waste processing alternatives for high-level waste (HLW) calcine and liquid sodium-bearing waste (SBW); and (2) Waste management facility disposition alternatives. Some of the alternatives contained sub-alternatives referred to as ''options'' in the EIS.

DOE has decided to select hot isostatic pressing (HIP) as the technology to treat calcine to provide a volume reduced monolithic waste form that is suitable for transport outside Idaho, with completion of treatment by a target date of December 31, 2035.

DOE has consulted with the State of Idaho on the decision described herein. DOE will continue to consult with the State on the decisions yet to be made on closure of calcine-related facilities.

ADDRESSES: Copies of this Amended ROD will be available on DOE's National Environmental Policy Act (NEPA) Web site at: *http://www.gc.energy.gov/nepa* under DOE NEPA Documents.

FOR FURTHER INFORMATION CONTACT: For further information on this Amended

[1] Pursuant to a phased decision strategy described in the initial ROD, DOE has issued an amended ROD on November 28, 2006 (71 FR 68811). This new amended ROD supplements the decisions in the two previous RODs.

ROD and the Idaho Cleanup Project, contact Nolan R. Jensen, Federal Project Director, U.S. DOE, Idaho Operations Office, 1955 Fremont Avenue, MS 1222, Idaho Falls, ID 83415, telephone: (208) 526–5793.

For general information on DOE's NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. DOE, 1000 Independence Avenue, SW., Washington, DC 20585–0103, Telephone: (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

From 1952 to 1991, DOE and its predecessor agencies reprocessed spent nuclear fuel (SNF) at INTEC, known prior to 1998 as the Idaho Chemical Processing Plant, on the INL Site. Reprocessing operations used solvent extraction systems to remove mostly uranium-235 from SNF. The waste product from the first extraction cycle of the reprocessing operation was liquid HLW mixed with hazardous materials. Subsequent extraction cycles, treatment processes, and follow-on decontamination activities generated additional liquid HLW that was combined to form SBW, which is generally much less radioactive than HLW generated from the first extraction cycle. These liquid wastes were stored in eleven 300,000-gallon below-grade storage tanks. The last campaign of SNF reprocessing at INTEC was in 1991, and HLW was no longer generated at INTEC after that time. From 1963 to 1998, DOE processed HLW and SBW through a calcination process that converted the liquid waste into a dry powder referred to as calcine. Some SBW was processed by calcination from 1998 to 2000, when a decision to shut down the New Waste Calcining Facility was made.

At present, approximately 4,400 cubic meters of HLW calcine remain stored in six bin sets (a series of reinforced concrete vaults, each containing three to twelve stainless steel storage bins). The stainless steel in the storage bins is highly corrosion resistant, and the bins are designed to be secure for at least 500 years. Based on the analyses summarized in the EIS, DOE has concluded that the calcine stored in the bins poses no significant present hazard to public health or the environment.

As a result of litigation, DOE and the State of Idaho reached an agreement in 1995 referred to as the Idaho Settlement Agreement/Consent Order (Settlement Agreement) that, among other things, requires DOE to ''treat all HLW currently at INEL so that it is ready to be moved outside of Idaho for disposal by a target date of 2035.'' It further requires that a ROD be issued no later than December 31, 2009 establishing a date for completion of the treatment of all calcined waste located at the INL Site by a contemplated target date of December 31, 2035. The Settlement Agreement also requires that DOE submit an application for a RCRA (or statutory equivalent) Part B Permit to the State by December 1, 2012.

DOE issued the *Idaho High-Level Waste and Facilities Disposition Final Environmental Impact Statement* in October 2002, with the State of Idaho as a cooperating agency. The EIS analyzed two sets of alternatives for accomplishing the proposed action relative to calcine:

1. Waste processing alternatives for liquid SBW, including newly generated liquid waste stored in three 300,000 gallon below grade tanks, and solid calcine stored in bin sets at the INTEC on the INL Site; and

2. Facility disposition alternatives for final disposition of facilities directly related to the HLW and SBW Program after its missions are complete, including any new facilities necessary to implement the waste processing alternatives.

In DOE's 2005 ROD, DOE decided to pursue a phased decision-making process regarding the proposed actions in the EIS. DOE also decided, among other things, to treat the remaining liquid SBW using the steam reforming technology and to conduct performance-based RCRA closure of existing facilities directly related to the HLW program at INTEC, excluding the INTEC Tank Farm Facility (TFF) and bin set closure. As a result, DOE is constructing a facility for the purpose of treating and packaging the SBW. This new facility is known as the Integrated Waste Treatment Unit (IWTU).

The 2005 ROD also addressed the plan to issue an Amended ROD in 2006 specifically addressing closure of the TFF as well as an Amended ROD in 2009 addressing the strategy for calcine disposition and bin set closure. In the 2006 Amended ROD (71 FR 68811), DOE decided to conduct performance based closure of the INTEC TFF.

Decisions made in this ROD consider the Administration's intent to terminate ongoing funding for the Yucca Mountain program while evaluating nuclear waste disposal alternatives, as indicated in the Administration's fiscal year 2010 budget request. DOE remains committed to meeting its obligations to manage and ultimately dispose of HLW and spent nuclear fuel. DOE will convene a Blue Ribbon Commission to evaluate alternatives for meeting these obligations. The commission will provide the opportunity for a meaningful dialogue on how best to address this challenging issue and will provide recommendations to DOE that will form the basis for working with the Congress to revise if appropriate the statutory framework for managing and disposing of HLW and spent nuclear fuel. The ultimate disposition of the calcine HLW, and the applicable waste acceptance criteria, may be affected by the upcoming recommendations of the anticipated Blue Ribbon Commission.

II. Waste Processing Alternatives Analyzed in the EIS

The 2002 EIS analyzed six alternatives for calcine:

- *No Action Alternative*

Under this alternative, the New Waste Calcining Facility (NWCF) would remain in standby and the calcine would remain in the bin sets indefinitely.

- *Continued Current Operations Alternative*

Under this alternative, the NWCF would remain in standby pending receipt of a RCRA permit from the State of Idaho and upgrades to air emission controls required by the U.S. Environmental Protection Agency (EPA).

- *Separations Alternative (with three treatment options)*

This alternative comprises three treatment options, each of which would use a chemical separations process, such as solvent extraction, to divide the calcine into fractions suitable for disposition as either: HLW, transuranic (TRU) waste, or low-level waste, depending on waste characteristics. Separating the radionuclides in the waste into fractions would decrease the amount of HLW, saving space and reducing disposition costs. The three waste treatment options under the Separations Alternative are described below:

1. *The Full Separations Option* would separate the radioisotopes in the calcine into high-level and low-level waste fractions. The HLW fraction would be vitrified in a new facility at INTEC, placed in stainless steel canisters, and stored onsite until shipped to a storage or disposition facility. DOE would dispose of the low-level waste fraction on site, or at an offsite DOE or commercial low-level waste disposal facility.

2. *The Planning Basis Option* reflects previously announced DOE decisions and agreements with the State of Idaho regarding the management of HLW. It is similar to the Full Separations Option in that, after separations, the HLW fraction

would be vitrified in a new facility at INTEC, placed in stainless steel canisters, and stored onsite until shipped to a storage or disposition facility. DOE would dispose of the low-level waste fraction on site, or at an offsite DOE or commercial low-level waste disposal facility.

3. *The Transuranic Separations Option* would consist of separating the HLW into two fractions. The resulting fractions would be managed as TRU waste and low level waste. The TRU fraction that meets applicable requirements, would be solidified, packaged, and shipped to the Waste Isolation Pilot Plant for disposal. DOE would dispose of the low-level waste fraction on site or at an offsite DOE or commercial low-level waste disposal facility.

• *Non-Separations Alternative (with four treatment options)*

This alternative includes four treatment options for solidifying HLW calcine. The four treatment options are briefly described below:

1. *The Hot Isostatic Pressing (HIP) Waste Option* under which HLW calcine would be treated in a high pressure, high temperature process that would convert the calcine into a glass-ceramic waste form. The final product would be packaged for storage, transport, and disposition.

2. *The Direct Cement Waste Option* under which HLW calcine would be retrieved, mixed with cement, poured in stainless-steel canisters, and cured at elevated temperature and pressure. The canisters would be placed in storage for transport and subsequent disposition.

3. *The Early Vitrification Option* would involve vitrifying the HLW calcine into a glass-like solid. The vitrified HLW would be placed in interim storage pending disposition.

4. *The Steam Reforming Option* includes packaging of HLW calcine without additional treatment for shipment and disposition.

• Minimum INEEL (now INL) Processing Alternative

This alternative would minimize the amount of waste treatment at the INL by using the vitrification facility (Waste Treatment Plant) under construction for the DOE Hanford Site in the State of Washington. The HLW calcine would be placed in shipping containers and sent to the Hanford Site where it would be vitrified.

• Direct Vitrification Alternative (with two treatment options)

This alternative includes two treatment options: Vitrification without Calcine Separations and Vitrification with Calcine Separations. The option to vitrify calcine without separations would be similar to the Early Vitrification Option. The option to vitrify the HLW fraction from calcine separations would be similar to the Full Separations Option. Under the Vitrification with Calcine Separations Option, calcine would be retrieved from the bin sets, and chemically separated into a HLW fraction to be vitrified and a low-level waste (LLW) fraction to be grouted. Under the Vitrification without Calcine Separations Option, calcine would be directly vitrified. Under either option, vitrified HLW would be stored pending disposition.

III. DOE and the State of Idaho Preferred Alternatives Identified in the EIS

The DOE Preferred Alternative identified in the 2002 EIS for waste processing (including calcine) was to implement the proposed action by selecting from among the action alternatives, options, and technologies analyzed in the 2002 EIS. The selection of any one of, or combination of, technologies or options used to implement the proposed action would be based on the performance criteria of technical maturity, environmental health and safety considerations, consideration of public comment, cost, schedule, and programmatic risk. Options excluded from DOE's preferred alternative were storage of calcine in bin sets for an indefinite period of time (analyzed under the Continued Current Operation Alternative), shipment of all calcine to the Hanford Site for treatment (analyzed under the Minimum INEEL [now INL] Processing Alternative), and disposal of mixed LLW at INL (analyzed under multiple alternatives).

The State of Idaho Preferred Alternative identified in the 2002 EIS for waste processing was the Direct Vitrification Alternative. The State of Idaho preferred vitrification based on the belief that it was the treatment alternative with the lowest technical and regulatory uncertainty for meeting waste removal goals and providing a clear baseline for fulfilling the objectives of removal of waste from Idaho within the timelines envisioned by the Settlement Agreement. The State of Idaho was willing to consider other waste treatment options, if they were comparable or better than the Direct Vitrification Alternative in terms of environmental impact, schedule, and/or cost.

IV. Environmentally Preferable Alternative

In nine of fourteen environmental areas analyzed, the 2002 EIS indicates little or no environmental impact would occur under all of the action alternatives. In the remaining five areas analyzed (air, traffic and transportation, health and safety, waste and materials, and facility accidents), the results indicate that potential short-term impacts from routine exposures would be small and would not differ significantly among action alternatives. Under normal operations, none of the waste processing action alternatives analyzed in the EIS would result in large short-term or long-term impacts to human health or the environment. Also, none of the action alternatives would result in appreciably different impacts on historic, cultural and natural resources.

Any of the waste treatment alternatives that place the calcine in a waste form suitable for disposition outside of the State of Idaho would be environmentally preferable compared to the No Action and Continued Current Operations Alternatives.

V. Decision

DOE has decided to deploy the HIP technology to cost-effectively treat the calcine waste. This option also presents the flexibility to either:

• Treat calcine in a sealed high temperature and high pressure canning process including the addition of treatment additives necessary to produce a glass-ceramic and volume reduced monolithic waste form; or

• Treat calcine in a sealed high temperature and high pressure canning process without addition of treatment additives resulting in an even greater volume reduction.

The HIP technology deployed for the treatment of HLW calcine also provides the technological capability to further treat the SBW steam-reformed carbonate waste form, should such treatment be necessary in order for this waste to be ready to leave Idaho by 2035 as required by the 1995 Settlement Agreement.

Treatment using the HIP technology has been demonstrated to generate a waste form consistent with waste form requirements that are currently specified for the performance of single-phase borosilicate glass being produced at DOE's Defense Waste Processing Facility at the Savannah River Site and to be produced at the Waste Treatment Plant at DOE's Hanford Site. The use of HIP with the addition of treatment additives will be necessary to eliminate the RCRA hazardous waste characteristics should calcine be

dispositioned at a non-RCRA-permitted site outside the State of Idaho.[2]

If it is decided to disposition calcine at a RCRA-permitted facility outside the State of Idaho, the use of HIP without addition of treatment additives would cost-effectively reduce the volume of waste even further, resulting in fewer canisters of product to be ultimately shipped for such disposition outside the State of Idaho.[3]

DOE's decision will allow DOE to meet the provisions of the Settlement Agreement for the treatment of all calcinated waste and, if applicable, SBW.

To facilitate treatment, DOE has decided to retrieve and pneumatically (forced air through piping) transport the calcine to a surge tank located at the head end of the IWTU at such time as the calcine treatment and packaging process is about to commence. The IWTU facility, after completion of its SBW mission and suitable reconfiguration, will be used to support treatment of the calcine and other wastes and meet associated safety and seismic design basis requirements.

In accordance with the Settlement Agreement, DOE will submit a request for a Permit Modification to the Integrated Waste Treatment Unit RCRA Part B Permit no later than December 1, 2012, that will address:

- Calcine retrieval and pneumatic transport of the retrieved calcine to a designed surge tank to be located at the head end of the IWTU facility, and
- HIP treatment/processing of all calcine within a modified IWTU facility.

DOE has consulted with the State of Idaho on the decisions described herein. The State of Idaho concurs with DOE's selection of HIP technology to treat calcine (and concurs that it provides the technological capability to further treat the SBW steam-reformed carbonate waste form, should such treatment be necessary) to produce a glass ceramic and volume reduced monolithic waste form. This treatment appears comparable to single-phase borosilicate glass resulting from vitrification which was Idaho's previous preferred alternative. Idaho prefers the HIP technology with the addition of treatment additives because it is the most likely form to meet current regulatory requirements allowing for disposal outside the State of Idaho. Idaho does not object to the HIP technology without the addition of treatment additives provided the final waste form is eligible for transport outside the State of Idaho for storage or disposition. DOE will continue to consult with the State on the decisions yet to be made concerning the addition of treatment additives for the HIP treatment of the calcine waste.

No environmental impacts resulting from operations under this decision would require specific mitigation measures. DOE will, however, use all practicable means to avoid or minimize environmental harm when implementing the actions described in this amended ROD. Those measures include employing engineering design features to ensure that calcine waste processing via HIP is conducted safely and in accordance with all applicable regulatory requirements. Other measures include maintaining a rigorous health and safety program to protect workers from radiological and chemical contaminants, monitoring worker and environmental risk, and continuing efforts to reduce generation of wastes. DOE will implement the comprehensive list of standards and requirements to protect workers, the public, and the environment specified in Chapter 6 of the Final EIS, as appropriate.

VI. Basis for Decision

DOE is selecting the HIP technology to treat calcine HLW for a number of reasons. The HIP technology is anticipated to cost-effectively treat the calcine waste, reduce the volume of the waste, and place the waste in a form ready to be moved out of the State of Idaho, consistent with the dates in the Settlement Agreement.

Issued in Washington, DC, on December 23, 2009.

Inés R. Triay,

Assistant Secretary for Environmental Management.

[FR Doc. E9–31151 Filed 12–31–09; 8:45 am]

BILLING CODE 6450–01–P

[2] Under this treatment option (HIP with additives), an approved delisting petition would be required and any land disposal restrictions would also have to be met.

[3] Under this treatment option (HIP without treatment additives), any land disposal restrictions would also have to be met.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13328–001]

Cordova Electric Cooperative, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Alternative Licensing Procedures

December 24, 2009.

a. *Type of Filing:* Notice of Intent to File License Application, Filing of Pre-Application Document, and Approving Use of the Alternative Licensing Procedures.

b. *Project No.:* 13328–001.

c. *Dated Filed:* October 28, 2009.

d. *Submitted by:* Cordova Electric Cooperative, Inc. (Cordova Electric).

e. *Name of Project:* Snyder Falls Creek Hydroelectric Project.

f. *Location:* On Snyder Falls Creek, near the town of Cordova, Alaska. The project would occupy lands within the Chugach National Forest administered by the U.S. Forest Service.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Clay Koplin, CEO, Cordova Electric Cooperative, Inc., 705 Second Street, Cordova, Alaska 99574; (907) 424–5026; e-mail at *ckoplin@cordovaelectric.com*.

i. *FERC Contact:* Steve Hocking at (202) 502–8753; or e-mail at *steve.hocking@ferc.gov*.

j. Cordova Electric filed a request to use the Alternative Licensing Procedures on October 28, 2009. Cordova Electric issued a public notice of its request on November 5, 2009. In a letter dated December 24, 2009, the Director, Division of Hydropower Licensing approved Cordova Electric's request to use the Alternative Licensing Procedures.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR section 600.920; and (c) the Alaska State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR section 800.2.

l. With this notice, we are designating Cordova Electric as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Cordova Electric filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public

Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31093 Filed 12–31–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ09–3–001]

Big Rivers Electric Corporation; Notice of Filing

December 23, 2009.

Take notice that on December 16, 2009, pursuant to the Commission's September 17, 2009, ''Order Conditionally Granting Petition for Declaratory Order and Granting Waivers,'' *Big Rivers Elec. Corp.,* 128 FERC ¶ 61,264 (2009) (September 17 Order), Big Rivers Electric Corporation filed revised tariff sheets to its ''safe harbor'' open access transmission tariff, redesignated as its Second Revised and Restated Open Access Transmission Tariff, effective September 17, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31089 Filed 12–31–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–426–000]

Stetson Wind II, LLC; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 23, 2009.

This is a supplemental notice in the above-referenced proceeding of Stetson Wind II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 12, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31088 Filed 12–31–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–425–000]

Oceanside Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 23, 2009.

This is a supplemental notice in the above-referenced proceeding of Oceanside Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,

in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 12, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31091 Filed 12–31–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 400–051]

Public Service Company of Colorado; Notice of Settlement Agreement and Soliciting Comments and Reply Comments

December 24, 2009.

Take notice that the following Settlement Agreement (Settlement) has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–400–051.

c. *Date Filed:* December 23, 2009.

d. *Applicant:* Public Service Company of Colorado (PSCo).

e. *Name of Project:* Ames Hydroelectric Project.

f. *Location:* The existing project is located on Lake Fork, Howard Fork, and South Fork of the San Miguel River, in San Miguel County, about 6 miles north of Telluride, Colorado. The Ames Project occupies 99 acres of the Uncompahgre National Forest.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randy Rhodes, Public Service Company of Colorado, 4653 Table Mountain Drive, Golden Colorado 80403; telephone (720) 497–2123.

i. *FERC Contact:* David Turner (202) 502–6091 or via e-mail at *david.turner@ferc.gov*.

j. *Deadline for filing comments on the Settlement: January 12, 2010.* Reply comments due *January 22, 2010.* Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. Written comments (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. PSCo filed the settlement agreement, which resolves all aquatic habitat and fishery related issues in conjunction with the United States Forest Service's proposed section 4(e) conditions for the Ames Hydroelectric Project. PSCo filed the settlement agreement on behalf of itself, United States Forest Service, and the Colorado Department of Natural Resources. PSCo requests that the Commission accept and incorporate, without material modification, all of the proposed license articles in Appendix B of the settlement agreement in the new project license.

l. The A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''e-Library'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31092 Filed 12–31–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13351–000]

Marseilles Land and Water Company; Notice Soliciting Scoping Comments

December 23, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–13351–000.

c. *Date filed:* December 30, 2008.

d. *Applicant:* Marseilles Land and Water Company.

e. *Name of Project:* Marseilles Lock and Dam Project.

f. *Location:* On the Illinois River, in the town of Marseilles, La Salle County, Illinois. This project would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Lee W. Mueller, Architect and Vice President, Marseilles Land & Water Company, 4132 S. Rainbow Blvd., #247, Las Vegas, NV 89103, (702) 367–7302.

i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or *Stephen.kartalia@ferc.gov.*

j. *Deadline for filing scoping comments:* January 22, 2010.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the

Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Project Description:* The Marseilles Lock and Dam Project would utilize the head created by the existing 24-foot-high Army Corps of Engineers (Corps) Marseilles Lock and Dam and two existing Corps headgate structures and would consist of: (1) The existing north and south headraces in which a portion of the south headrace would be filled in and joined to the existing north headrace which would be deepened to accommodate the flow from both headraces leading to; (2) a new intake structure and forebay leading to; (3) a new powerhouse containing four generating units with a total installed capacity of 10.26 megawatts (MW); (4) a new tailrace discharging water back to the Illinois River; (5) a new underground transmission line; and (6) appurtenant facilities.

The project would operate in a run-of-river mode.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to addess the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in Item H above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process*

The Commission staff intends to prepare a single Environmental Assessment (EA) for the Marseilles Lock and Dam Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on December 23, 2009.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31090 Filed 12–31–09; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Project No. 2620–042]

Lockhart Power Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, and Terms and Conditions

December 23, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Capacity Amendment of License.

b. *Project No.:* 2620–042.

c. *Date Filed:* November 25, 2009.

d. *Applicant:* Lockhart Power Company.

e. *Name of Project:* Lockhart Project.

f. *Location:* The project is located on the Broad River in the Town of Lockhart, Chester, Union, Cherokee, and York Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Bryan D. Stone, Chief Operating Officer, Lockhart Power Company, PO Box 10, 420 River Street, Lockhart, South Carolina 29364, (800) 368–1289.

i. *FERC Contact:* Mr. Jeremy Jessup (202) 502–6779 or *Jeremy.Jessup@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, and preliminary terms and conditions, is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Request:* The applicant proposes to install a single submersible turbine/generator unit in the hydro canal bank and provide for seasonal fluctuations of head pond levels up to 5 feet for the months of July and August when necessitated by peak power demands. The generating unit would have an installed capacity of 534 kW and an estimated hydraulic capacity of 280 cfs. The proposed unit will draw water from the existing hydro canal to provide minimum-flow releases to the bypassed reach. The installed capacity of the Project will increase to 18.5 megawatts (MW) with the installation of the new unit.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' or '' TERMS AND CONDITIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *e-Filing:* Comments, motions to intervene, protests, or terms and conditions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''eFiling'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31087 Filed 12–31–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0536; FRL–9100–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Renewal); EPA ICR No. 1893.05, OMB Control No. 2060–0430

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 3, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2009–0536, to (1) EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Hillary Ward, Office of Air Quality Planning and Standards, MC E143–01, Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone number: (919) 541–3154; fax number: (919) 541–0246; e-mail address: *Ward.Hillary@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2009 (74 FR 38004), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2009–0536, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the OECA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the OECA Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Renewal).

ICR Status: This ICR is scheduled to expire on January 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR is a renewal of current data collection and reporting requirements for Municipal Solid Waste Landfills subject to 40 CFR part 60, subpart Cc emission guidelines. The subpart Cc guidelines are implemented through either State plans or the Federal plan (40 CFR part 62, subpart GGG) that EPA developed for landfills located in States and Indian country that did not

develop a State or Tribal plan. State plans were due to EPA by December 12, 1996 and the Federal plan was promulgated on November 8, 1999. The data collection is a mandatory requirement (Clean Air Act section 114(a)(1)).

The information generated by the monitoring, recordkeeping, and reporting requirements described in this ICR is used by the Agency to ensure that facilities affected by the emission guidelines continue to operate the control equipment and achieve compliance with the regulation. The emission guidelines require affected facilities to maintain all records, including the submitted reports and notifications for at least 5 years.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Municipal Solid Waste Landfills.

Estimated Number of Respondents: 559.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 46,146.

Estimated Total Annual Cost: $3,956,321, which includes labor costs of $3,229,721 and operation and maintenance costs of $726,600.

Changes in the Estimates: There is an increase of 33,690 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase reflects the recordkeeping and reporting burden for entities under State plans and the Federal plan. The original ICR included only the burden for municipal solid waste landfills subject to the Federal plan for municipal solid waste landfills. This ICR renewal adds the burden imposed by State plans to the burden imposed by the Federal plan.

Dated: December 24, 2009.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E9–31148 Filed 12–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2008–5; FRL–9099–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for East Kentucky Power Cooperative, Inc.—William C. Dale Power Station; Clark County, KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a State operating permit.

SUMMARY: Pursuant to Clean Air Act (CAA) Section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an Order, dated December 14, 2009, denying a petition to object to a title V operating permit issued by the Kentucky Division for Air Quality (KDAQ) to East Kentucky Power Cooperative, Inc. (EKPC) for its William C. Dale Power Station (Dale Station) located in Clark County, Kentucky. This Order constitutes a final action on the petition submitted by Sierra Club and Kentucky Environmental Foundation (Petitioners) on November 24, 2008. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of the Order may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice appears in the **Federal Register**.

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/ekpc_dale_response2008.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by State permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Petitioners submitted a petition regarding the EKPC Dale Station on November 24, 2008, requesting that EPA object to the title V operating permit (#V–08–009). Petitioners alleged that the permit was not consistent with the CAA for the following reasons: (1) The maximum heat input rates in the permit must be enforceable limits because, presumably, there exists a State operating permit for Dale Station that includes maximum heat inputs and, because without such maximum heat input limits, compliance with the National Ambient Air Quality Standards for SO_2 cannot be assured; and, (2) KDAQ cannot delete the three-hour averaging time from the particulate matter (PM) emission limit for certain coal handling equipment because the emission limit must have an averaging time; therefore, the three-hour averaging time should be placed back into the permit, and the permit should be required to include monitoring and reporting adequate to assure compliance with the PM limit.

On December 14, 2009, the Administrator issued an Order denying the petition. The Order explains EPA's rationale for denying the petition with respect to the issues raised.

Dated: December 18, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–31175 Filed 12–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petitions IV–2008–1 and -2; FRL–9099–2]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit for Cash Creek Generation, LLC—Cash Creek Generating Station; Henderson County, KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petitions to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act (CAA) Section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an Order, dated December 15, 2009, granting in part and denying in part petitions to object to a merged prevention of significant deterioration (PSD) and title V operating permit issued by the Kentucky Division for Air Quality (KDAQ) to Cash Creek Generation, LLC for its Cash Creek Generating Station located near Owensboro in Henderson County, Kentucky. This Order constitutes a final action on parts of the petitions submitted by Sierra Club and Valley Watch (Petitioners) on January 31, 2008, and February 13, 2008, respectively. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice appears in the **Federal Register.**

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/cashcreek_response2008.pdf*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Petitioners submitted petitions regarding the Cash Creek Generating Station on January 31, 2008, and February 13, 2008, respectively, requesting that EPA object to the merged PSD and title V operating permit (#V–07–017). Petitioners alleged that the permit was not consistent with the CAA for the following reasons: (1) The best available control technology (BACT) analyses did not include natural gas as a clean fuel; (2) the permit lacks the appropriate new source performance standards for the combustion turbines planned for the facility; (3) the permit lacks a limit for particulate matter of less than or equal to 2.5 microns in diameter; (4) the permit lacks a BACT limit for carbon dioxide; (5) KDAQ did not consider, and was unresponsive to, public input regarding alternatives analysis for the proposed permit; (6) Elm Road (a facility located in Wisconsin) sulfuric acid mist limits were not considered in the BACT analysis; (7) KDAQ did not respond to comments regarding material handling and storage emissions; and (8) KDAQ did not respond to Valley Watch comments on increased ozone formation due to the emissions from the proposed source.

On December 15, 2009, the Administrator issued an Order granting in part and denying in part the petitions. The Order explains EPA's rationale for granting the petitions with respect to issues 1, 2, 3, 5, 6, and 8; and denying the petitions with respect to the remaining issues.

Dated: December 18, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–31149 Filed 12–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9099–6]

Proposed Cercla Administrative Cost Recovery Settlement; David Benvenuti and Howe Cleaners, Howe Cleaners Site, Barre, VT

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past costs concerning the Howe Cleaners Superfund Site in Barre, Vermont with the following settling parties: David Benvenuti and Howe Cleaners. The settlement requires the settling parties to pay $320,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

DATES: Comments must be submitted by February 3, 2010.

ADDRESSES: Comments should be addressed to Peter DeCambre, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100 (OES04–1), Boston, Massachusetts 02109–3912 (Telephone No. 617–918–1890) and should refer to: In re: Howe Cleaners Superfund Site, U.S. EPA Docket No. 01–2009–0045.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Peter DeCambre, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100, (OES04–1), Boston, Massachusetts 02109–3912 (Telephone No. 617–918–1890; E-mail *decambre.peter@epa.gov*).

Dated: December 22, 2009.

James T. Owens III,

Director, Office of Site Remediation and Restoration.

[FR Doc. E9–31176 Filed 12–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0986; FRL–9098–3]

Public Comment on Candidate National Enforcement and Compliance Assurance Priorities for Fiscal Years 2011–2013

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment Period.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment and recommendations on enforcement and compliance national priorities to be addressed for fiscal years 2011–2013. EPA selects these priority areas every three years in order to focus federal resources on the most important environmental problems where noncompliance is a significant contributing factor.

The U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance is collecting external comment on the following preliminary set of national priority candidates for FY 2011–2013 listed on our Web site: *http://www.epa.gov/compliance/data/planning/priorities/index.html.*

This preliminary list is based on analysis of proposals received from states, EPA staff, tribes, and on-line public comments. Enforcement national priorities are not limited to those priority candidates on the above Web site and the public is invited to propose additional areas for consideration. Comments will be considered as part of the process EPA uses to identify and select enforcement and compliance national priorities. Final priority selection will be incorporated into the EPA Office of Enforcement and Compliance Assurance National Program Manager Guidance that provides national program direction for all EPA regional offices released in April 2010. EPA will consider these comments as it moves forward in the decision-making process, but will not respond to all comments received.

DATES: Comments must be received on or before January 19, 2009.

ADDRESSES: Information in support of this Notice of Public Comment is available via the Internet at: *http://www.epa.gov/compliance/data/planning/priorities/index.html.*

Submit your comments via *http://www.regulations.gov*, identified by Docket ID No. EPA–HQ–OECA–2009–0986; FRL–9098–3. Follow the on-line instructions for submitting comments.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2009–0986. 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.* 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 can not 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 FURTHER INFORMATION CONTACT: Christopher Knopes, Director, National Planning, Measures, and Analysis Staff, Office of Enforcement and Compliance Assurance, Mail Code: M2221A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2337; fax number: 202–564–0027; e-mail address: *knopes.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Are EPA Enforcement and Compliance National Priorities?

The Environmental Protection Agency (EPA) is voluntarily soliciting public comment and recommendations on enforcement and compliance national priorities to be addressed for fiscal years 2011–2013. EPA selects these priorities every three years in order to focus federal resources on the most important environmental problems where noncompliance is a significant contributing factor. Enforcement and compliance national priorities are selected according to three criteria: (1) Environmental impact; (2) Significant noncompliance; (3) Appropriate federal role. These selection criteria will be used to make decisions on enforcement and compliance priorities for 2011–2013. The priorities do not impose any legally binding requirements on any outside parties.

II. On What Is EPA Requesting Comment?

The U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, is collecting external comment on a set of candidate enforcement and compliance priorities for FY 2011–2013. *http://www.epa.gov/compliance/data/planning/priorities/index.html.* This preliminary list of candidate enforcement and compliance national priorities is based on analysis of proposals received from states, EPA staff, tribes, and on-line public comments. Enforcement national priorities are not limited to those priorities described on the above Web site. The public is invited to propose additional areas for consideration.

The Office of Enforcement and Compliance Assurance is committed to identifying a limited number of national priorities. Some current priority areas may be carried forward or refined during FY 2011–2013. For additional information on current FY 2008–2010 national priorities, please visit the Web site listed above.

III. How Was the Preliminary List of Enforcement National Priorities Developed?

During 2009, EPA regional offices consulted state and tribal regulatory partners about existing and potential new national program priorities for fiscal years 2011–2013. The Agency also issued letters requesting comments on new national priorities to state environmental, public health, and agricultural departments and each federally recognized Indian tribe. EPA conducted outreach regarding the national priority stakeholder engagement and selection process at the National Environmental Justice Advisory Committee (NEJAC) meeting in September 2009. In addition, a new Web site launched in August 2009 collected over 100 public comments on candidate national priorities, selection criteria, and information provided on EPA's Web site using blogging technology to collect external feedback. For additional details on public comments provided during the Fall 2009 comment period see: *http://blog.epa.gov/enforcementnationalpriority.*

IV. Can the Deadline for Comments Be Extended?

No. EPA and states jointly implement Federal environmental laws. EPA issues National Program Manager Guidance (NPM Guidance) so that EPA and states can effectively align their activities to achieve mutual goals. The NPM guidance must be released for state and public comment in February and finalized in April in order to allow states to direct resources appropriately according to their fiscal calendars. As a result, EPA must receive public comments by January 16, 2010 in order

to make selections in keeping with this schedule.

Dated: December 23, 2009.

Lisa Lund,

Director, Office of Compliance.

[FR Doc. E9–31042 Filed 12–31–09; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $70 million direct loan to support the export of approximately $69 million worth of aluminum beverage can and end manufacturing equipment to Saudi Arabia. The U.S. exports will enable the Saudi company to produce approximately 800 million aluminum beverage cans and 8 billion aluminum beverage ends per year during the 10-year repayment term of the loan. Available information indicates that this new Saudi aluminum beverage can and end production will be sold in Saudi Arabia and international markets. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 947, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

Jonathan J. Cordone,

Senior Vice President and General Counsel.

[FR Doc. E9–31133 Filed 12–31–09; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

December 28, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a currently valid OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before March 5, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* and to Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–1044.

Title: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01–338 and WC Docket No. 04–313, FCC 04–290, Order on Remand.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 645 respondents; 645 responses.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 251.

Total Annual Burden: 5,160 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit or disclose confidential information. However, in certain circumstances, respondents may voluntarily choose to submit confidential information pursuant to applicable confidentiality rules.

Need and Uses: The Commission will submit this information collection after this 60 day comment period in order to obtain the full three year clearance from the Office of Management and Budget (OMB). The Commission has not changed its burden estimates or requirements that were submitted to the OMB for approval in 2007.

All of the information collections implement the requirements of section 251 of the Telecommunications Act of 1996. Section 251 is designed to accelerate private sector development and deployment of telecommunications technologies and services by spurring competition. In order to foster competition in the local telephone market, the Act requires incumbent local exchange carriers (incumbent LECs) to share certain elements of their local telephone networks, providing them to other carriers at reasonable prices on an unbundled basis. These ''unbundled network elements'' (UNEs) are necessary for competition because the only alternative, building entire new telephone networks, would be prohibitively expensive for new entrants.

In Order, FCC 03–36, the Commission adopted rules and regulations designed to eliminate operational barriers to competition in the telecommunications services market and implement certain provisions of Section 251, including the UNE obligations of incumbent LECs.

In the Order on Remand, FCC 04–290, the Commission responded to a decision by the United States Court of Appeals for the District of Columbia that vacated the ''sub-delegation'' of authority to state commissions and vacated and remanded certain nationwide impairment findings, including mass

market switching and dedicated transport.

Federal Communications Commission.

Alethea Lewis,

Information Specialist, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–31154 Filed 12–31–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted for Review to the Office of Management and Budget, Comments Requested

December 28, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a currently valid OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before February 3, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e-mail send them to: *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0059.

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Harmful Interference.

Form No.: FCC Form 740.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5,000 respondents, 5,000 responses.

Estimated Time Per Response: 1–5 minutes (.084 hours).

Frequency of Response: One time reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. sections 154(i), 157(a), 302(a), 303(b), 303(f), 303(g), and 303(r).

Total Annual Burden: 29,120 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There are no confidentiality issues.

Need and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance. There is no change to the FCC Form 740 or its associated requirements.

The FCC working in conjunction with the U.S. Customs Service is responsible for the regulation of both authorized radio services and devices that can cause harmful interference. FCC Form 740 must be completed for each radio frequency device which is being imported into the United States, and is used to keep non-compliant devices from being distributed to the general public, thereby reducing the potential for harmful interference being caused to authorized communications.

FCC Form 740 is submitted to the U.S. Customs Service and Border Patrol electronically or in a few cases paper format. The FCC Form 740 is not submitted to the Federal Communications Commission. When a violation is discovered, the FCC can issue a fine. If a product is suspected of illegal entry, the FCC works with the U.S. Customs Service to resolve the issue.

Federal Communications Commission.

Alethea Lewis,

Information Specialist, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–31155 Filed 12–31–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

December 28, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a currently valid OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before March 5, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission (FCC), via the Internet at *Judith–B.Herman@fcc.gov.* To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0496.

Title: ARMIS Operating Data Report.

Report No.: FCC Report 43–08.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 55 respondents; 55 responses.

Estimated Time Per Response: 139 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. sections 11, 219(b) and 220 of the Communications Act of 1934, as amended.

Total Annual Burden: 7,645 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Ordinarily questions of a sensitive nature are not requested in the ARMIS Operating Data Report. The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise in special circumstances only. In such circumstances, the respondent is instructed on the appropriate procedures to follow to safeguard sensitive data. Section 0.459 of the Commission's rules contains procedures for requesting confidential treatment of data. See 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission is requesting an extension (no change in the annual reporting requirement) for this expiring information collection. The Commission has adjusted the total number of respondents and burden hours to reflect more accurate estimates. The Commission is submitting this extension to the OMB in order to obtain the full three year clearance from them.

Section 220 of the Communications Act of 1934, as amended, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to this Act, including any accounts, records and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys.

The Automated Reporting Management and Information System (ARMIS) was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. The ARMIS Report 43–08 collects network operating data in a consistent format. The ARMIS Report 43–08 monitors network growth, usage and reliability.

In this submission to the OMB, the Commission is adjusting the number of carriers filing this ARMIS report from 56 to 55 to reflect the merger of two holding companies. The Commission, in its ARMIS Forbearance Order, noted that among other things, that the reporting carriers have committed to collecting and retaining all information/data internally that was previously reported but will not be reported during this OMB approval period on the ARMIS Report 43–08, for 24 months.

The information in the ARMIS Report 43–08 provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to receive, process and analyze the extensive amounts of data that are needed to administer the rules. ARMIS facilitates the timely and efficient analysis of revenue requirements, rate of return and price caps, and provides an improved basis for auditing and other oversight functions. It also enhances the Commission's ability to quantify the effects of policy proposals.

Federal Communications Commission.

Alethea Lewis,

Information Specialist, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–31156 Filed 12–31–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 19, 2010.

A. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Charles B. Flaming, individually, and Charles B. Flaming and Sadle Cattle Company, as a group acting in concert, both of Paxton, Nebraska; to acquire control of Henderson State Company, parent of Henderson State Bank, both in Henderson, Nebraska.

Board of Governors of the Federal Reserve System, December 29, 2009.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E9–31158 Filed 12–31–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register.** Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the

Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011223–045.

Title: Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd. and APL Co. PTE Ltd.; (operating as a single carrier); China Shipping Container Lines (Hong Kong) Company Limited and China Shipping Container Lines Company Limited (operating as a single carrier); CMA CGM, S.A.; COSCO Container Lines Company Ltd; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Mediterranean Shipping Company; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Yangming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would authorize the members to address issues relating to environmental initiatives and the reduction of air and water pollution.

Agreement No.: 012008–004.

Title: The 360 Quality Association Agreement.

Parties: NYKCool AB and Seatrade Group NV.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Green Chartering AS as a party to the agreement.

Dated: December 29, 2009.

By Order of the Federal Maritime Commission.

Tanga S. FitzGibbon,

Assistant Secretary.

[FR Doc. E9–31187 Filed 12–31–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory 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 Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on January 20, 2010, from 9 a.m. to 4 p.m./Eastern Time.

Location: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC. The hotel telephone number is 202–234–0700.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The Committee will discuss updates from its workgroups. 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*

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 14, 2010. Oral comments from the pubic will be scheduled between approximately 2 p.m. and 2:20 p.m/Eastern Time. Time allotted for each presentation will be limited to three minutes each. 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.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App. 2).

Dated: December 21, 2009.

Judith Sparrow,

Office of Programs and Coordination Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–31181 Filed 12–31–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory 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.

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.

Date and Time: The meeting will be held on January 13, 2010, from 9 a.m. to 5 p.m./Eastern Time.

Location: The Park Hyatt Hotel, 24th and M Streets, NW., Washington, DC. The hotel telephone is 202–789–1234.

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 committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the NHIN Workgroup, the Privacy & Security Policy Workgroup, and the Strategic Plan Workgroup. 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.*

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 6, 2010. Oral comments from the pubic will be scheduled between approximately 4 p.m. to 4:30 p.m. Time allotted for each presentation is 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.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App. 2).

Dated: December 21, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–31186 Filed 12–31–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee Unaccompanied Minor Placement Report & Minor Progress Reports; ORR–3 and ORR–4.

OMB No.: 0970–0034.

Description: The two reports collect information necessary to administer the Unaccompanied Refugee Minor (URM) program. The ORR–3 (Placement Report) is submitted to the Office of Refugee Resettlement (ORR) by the State agency at initial placement within 30 days of the placement, and whenever there is a change in the child's status, including termination from the program, within 60 days of the change or closure of the case. The ORR–4 (Outcomes Report) is submitted along with the initial ORR–3 placement report and again within approximately 12 months of the initial placement and each subsequent 12 months to record outcomes of the child's progress toward the goals listed in the child's case plan and particularly for youth 17 years of age and above related to independent living and/or educational plans.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–3	15	63	0.25	236.25
ORR–4	15	63	1.25	1,181.25

Estimated Total Annual Burden Hours: 1,417.50.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: December 29, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–31122 Filed 12–31–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0820]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and

instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Communities Putting Prevention to Work (OMB No. 0920–0820 Exp. 12/31/2009)—Reinstatement with Changes—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The American Recovery and Reinvestment Act of 2009 was designed to stimulate economic recovery in various ways, including preserving and creating jobs, assisting those most impacted by the recession, stabilizing State and local government budgets, strengthening the Nation's healthcare infrastructure, and reducing healthcare costs through prevention activities. The Recovery Act included $650 million for evidence-based clinical and community-based prevention and wellness strategies that support specific, measurable health outcomes to reduce chronic disease rates. The legislation provides an important opportunity for states, cities, rural areas, and tribes to advance public health across the lifespan and to reduce health disparities.

In the Fall of 2009, the Centers for Disease Control and Prevention (CDC) announced funding opportunities under the ARRA-funded Communities Putting Prevention to Work (CPPW) initiative, and received OMB approval to collect information from applicants that assisted reviewers in determining the applicants' eligibility for awards (OMB No. 0920–0820, exp. 12/31/2009). This approval was received on an emergency basis and expired 12/31/2009. CDC seeks to reinstate this clearance in 2010, with changes, to support additional competitions for ARRA-funded supplemental awards. The new competitions will identify meritorious proposals for community mentoring activities that build upon activities previously described in RFA DP09–912, *Community Approaches to Chronic Disease Prevention and Control*, and state-specific behavioral risk factor surveillance activities described in RFA DP0–901, *Healthy Communities, Tobacco Control, Diabetes Prevention and Control, and Behavioral Risk Factor Surveillance.* The CPPW initiative is managed by the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP).

The CPPW initiative is designed to support intensive community approaches to chronic disease prevention and control in selected communities. Activities should be designed to achieve progress toward the following prevention outcomes: increased levels of physical activity; improved nutrition (e.g., increased fruit/vegetable consumption, reduced consumption of salt and transfats); decreased prevalence of overweight/obesity prevalence; decreased smoking prevalence and decreased teen smoking initiation; and decreased exposure to secondhand smoke. Respondents will be health departments representing States, territories, the District of Columbia, and Tribal communities.

CDC estimates that a total of 80 applications will be collected in 2010. The information submitted by respondents to CDC will be used to assure eligibility for CPPW awards and to determine optimal utilization of funding. All information will be collected electronically through the Grants.gov portal. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Tribes and State and Local Health Departments.	Application for Community Approaches to Chronic Disease Prevention and Control.	40	1	40	1,600
	Application for Supplemental Funding for Healthy Communities, Tobacco Control, Diabetes Prevention and Control and Behavioral Risk Factor Surveillance.	40	1	40	1,600
Total					3,200

Dated: December 28, 2009.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–31130 Filed 12–31–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–10AE]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Malaria Pre-travel Advice: Knowledge and Practices Among US Healthcare Providers Whose Patients Develop Malaria—New—National Center for Zoonotic, Vector-Borne, and Enteric Diseases (NCZVED), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2007, there were 1505 cases of malaria reported in the U.S. and its territories. Except for one transfusion-related case, all cases in 2007 were imported. Almost all of the imported malaria cases could have been prevented with appropriate malaria prophylactic drug regimens. Achieving appropriate malaria prophylaxis requires knowledge and action by both the traveler and healthcare provider (HCP). There are limited studies on HCP knowledge and practices regarding malaria prophylaxis. We propose an activity to better define the types of HCPs giving pre-travel advice about malaria, their knowledge gaps regarding malaria, and their barriers to appropriate prescription of malaria prophylaxis.

All U.S. travelers with malaria reported in 2010 and their healthcare providers (if one was seen) who provided pre-travel advice will be interviewed by phone. Interviews will take no longer than 15 minutes. Questions to be asked of patients include demographics, knowledge of malaria risks, and use of prophylaxis during their travel. HCPs will be asked about their training, practice type, and knowledge of malaria risk and prevention. Univariate analysis will be done to describe characteristics of HCPs who give inappropriate prescriptions for malaria prophylaxis. Bivariate and multivariate analysis is planned to examine the association between various HCP characteristics and provision of inappropriate (or no) malaria prophylaxis. Findings from this activity will help CDC's malaria branch with the development and targeting of educational materials for HCPs regarding malaria in travelers. Information gathered will also guide content of educational and review articles to be published in journals most often read by target HCPs. The total estimated annual burden hours are 220.

There is no cost to respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Patients ≥18	350	1	15/60
Parents of patients <18	88	1	15/60
Healthcare providers	438	1	15/60

Dated: December 28, 2009.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–31129 Filed 12–31–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen

validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876 (Formerly: Dynacare Kasper Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521 (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for

conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. E9–30979 Filed 12–31–09; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Studying Community Programs to Reduce Childhood Obesity.

Date: January 29, 2010.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Mark Roltsch, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892–7924, 301–435–0287, *roltschm@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 28, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–31138 Filed 12–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Biochemistry and Biophysics of Membranes Study Section.

Date: January 27–28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Nuria E. Assa-Munt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892. (301) 451–1323. *assamunu@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Enabling Bioanalytical and Biophysical Technologies Study Section.

Date: January 28–29, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892. 301–435–1789. *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Biological Chemistry and Macromolecular Biophysics.

Date: January 28–29, 2010.

Time: 11 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892. (301) 435–1727. *schneidd@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 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–31139 Filed 12–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, ''Autoimmunity.''

Date: January 19, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Priti Mehrotra, PhD, Chief, Immunology Review Branch, Scientific Review Program, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3138, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, The Infant Microbiome and Immune Maturation.

Date: January 21, 2010.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Raymond Richard Schleef, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/ NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–3679, *schleefrr@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 24, 2009

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–31141 Filed 12–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Chemosensory Clinical Research Center Grant.

Date: January 28, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892. 301–496–8683. *singhs@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–31140 Filed 12–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review; File No. OMB–6, Emergency Federal Law Enforcement Assistance; OMB Control No. 1653–0019.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 13, 2009, Vol. 74 No. 196 52498, allowing for a 60 day comment period. USICE received no comments on this Information Collection from the public during this 60 day period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until February 3, 2010.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (File No. OMB–6) U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Section 404(b) of the Immigration and Naturalization Act provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be requested via e-mail to: *forms.ice@dhs.gov* with ''IEF—Emergency Assistance'' in the subject line.

Dated: December 22, 2009.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–31104 Filed 12–31–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1867–DR; Docket ID FEMA–2008–0018]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1867–DR), dated December 22, 2009, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 22, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from severe storms and flooding associated with Tropical Depression Ida and a nor'easter during the period of November 11–15, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William L. Vogel of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Atlantic, Cape May, and Ocean Counties for Public Assistance. Direct Federal Assistance is authorized.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–31127 Filed 12–31–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1866–DR; Docket ID FEMA–2008–0018]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1866–DR), dated December 22, 2009, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 22, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from Tropical Storm Ida during the period of November 9–10, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

Baldwin and Mobile Counties for Public Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–31125 Filed 12–31–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative, Science Technical Advisory Panel, Alaska

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP) will meet as indicated below.

DATES: The meeting will be held January 27 and 28, 2010, in Fairbanks, Alaska. On January 27, 2010, the meeting will begin at 9 a.m. at the International Arctic Research Center, University of Alaska Fairbanks, Room 501. Public comments will begin at 3 p.m. On January 28, 2010, the meeting will begin at 9 a.m. at the same location, and will adjourn at 4 p.m.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Executive Director, North Slope Science Initiative: c/o Bureau of Land Management, AK–910; 222 W. Seventh Avenue, #13; Anchorage, AK 99513; phone 907–271–3431 or e-mail *john_f_payne@blm.gov.*

SUPPLEMENTARY INFORMATION: The NSSI STAP provides advice and recommendations to the NSSI Oversight Group regarding priority needs for management decisions across the North Slope of Alaska. These priority needs may include recommendations on inventory, monitoring, and research activities that lead to informed land management decisions. The topics to be discussed at the meeting include:

- Emerging issue summaries from the STAP.
- Update on the land cover project.
- Update on the project tracking system and database.
- NSSI priority issues and projects.
- Other topics the Oversight Group or STAP may raise.

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative.

Before including your address, phone number, e-mail address, or other personal indentifying 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.

Dated: December 28, 2009.

Thomas P. Lonnie,

Alaska State Director.

[FR Doc. E9–31131 Filed 12–31–09; 8:45 am]

BILLING CODE 1310–JA–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Residential Lead-Based Paint Hazard Reduction Act

Notice is hereby given that on December 28, 2009, a proposed Consent Decree in *United States* v. *Jose and Guillermina Sierra,* Civil Action No. 1:09–CV–1149, was lodged with the United States District Court for the Western District of Michigan, Southern Division. The consent decree settles claims against the owner and management company of 32 residential properties containing approximately 67 units located in the area of Grand Rapids, Michigan. The claims were brought on behalf of the Environmental Protection Agency (''U.S. EPA'') and the Department of Housing and Urban Development (''HUD'') under the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4851 *et seq.* (''Lead Hazard Reduction Act''). The United States alleged in the complaint that the defendant failed to make one or more of the disclosures or to complete one or more of the disclosure activities required by the Lead Hazard Reduction Act.

Under the Consent Decree, the Defendants will certify that they are complying with residential lead paint notification requirements. The Defendants will submit an on-going operations and maintenance plan and will complete abating lead-based paint hazards identified in all residential properties owned by the Sierras that are not certified lead-based paint free. In addition, Defendant will pay an administrative penalty of $6,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Jose and Guillermina Sierra,* D.J. Ref. #90–5–1–1–09219.

The Proposed Consent Decree may be examined at the Department of Housing and Urban Development, Office of General Counsel, 451 7th St., NW., Room 9262, Washington, DC 20410; at the office of the United States Attorney for the Western District of Michigan, Post Office Box 208, Grand Rapids, MI 49501–0208 (Attn. Assistant United States Attorney J. Joseph Rossi); and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–31184 Filed 12–31–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on November 5, 2009, Mylan Technologies Inc., 110 Lake Street, Saint Albans, Vermont 05478, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methylphenidate (1724)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for analytical research and clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 3, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: December 17, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–31165 Filed 12–31–09; 8:45 am]

BILLING CODE 4410–09–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; 30-Day Notice

AGENCY: Office of National Drug Control Policy.

The Office of National Drug Control Policy (ONDCP) proposes the collection of information concerning arrestee drug use. ONDCP invites interested persons to submit comments to the Office of Management and Budget (OMB) regarding any aspect of this proposed effort.

Type of Information Collection: New collection.

Title: Arrestee Drug Abuse Monitoring (ADAM II) Program Questionnaire.

Use: The information will support statistical trend analysis.

Frequency: Ten sites will each conduct two cycles of surveys from 250 arrestees per cycle.

Annual Number of Respondents: 5000.

Total Annual Responses: 5000.

Average Burden per Response: 25 minutes.

Total Annual Hours: 2,083.

Send comments to John Kraemer, OMB Desk Officer for ONDCP, New Executive Office Building, Room 10235, Washington, DC 20503. Comments must be received within 30 days. Request additional information by facsimile transmission to (202) 395–6562, attention: Robert Cohen, ONDCP, Office of Research and Data Analysis.

Dated: December 29, 2009.

Daniel R. Petersen,

Deputy General Counsel.

[FR Doc. E9–31132 Filed 12–31–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2009–0577; EA–09–293]

In the Matter of: Certain Licensees Requesting Unescorted Access to Radioactive Material; Order Imposing Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Material (Effective Immediately)

I

The Licensees identified in Attachment 1 [1] to this Order hold licenses issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State, authorizing them to perform services on devices containing certain radioactive material for customers licensed by the NRC or an Agreement State to possess and use certain quantities of the radioactive materials listed in Attachment 2 to this Order. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement State regulations require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

Subsequent to the terrorist events of September 11, 2001, the NRC issued immediately effective security Orders to NRC and Agreement State Licensees under the Commission's authority to protect the common defense and security of the nation. The Orders required certain manufacturing and distribution (M&D) Licensees to implement Additional Security Measures (ASMs) for the radioactive materials listed in Attachment 2 to this Order (the radionuclides of concern), to supplement the existing regulatory requirements. The ASMs included requirements for determining the trustworthiness and reliability of individuals that require unescorted access to the radionuclides of concern. Section 652 of the Energy Policy Act of 2005, which became law on August 8, 2005, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI)

[1] Attachment 1 contains sensitive information and will not be released to the public.

identification and criminal history records check for ''any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks.'' Section 149 of the AEA also requires that ''all fingerprints obtained by a Licensee or applicant * * * shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.'' As a result, the trustworthiness and reliability requirements of the ASMs were updated and the M&D Licensees were issued additional Orders imposing the new fingerprinting requirements.

In late 2005, the NRC and the Agreement States began issuing Increased Controls (IC) Orders or other legally binding requirements to Licensees who are authorized to possess the radionuclides of concern. Paragraph IC 1.c of the IC requirements stated that ''service providers shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation as an employee of a Manufacturing and Distribution Licensee.'' Starting in December 2007, the NRC and the Agreement States began issuing additional Orders or other legally binding requirements to the IC Licensees, imposing the new fingerprinting requirements. In the December 2007 Fingerprinting Order, Paragraph IC 1.c of the IC requirements was superseded by the requirement that ''Service provider Licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation.'' However, NRC did not require background investigations for non-M&D service provider Licensees. Consequently, only service representatives of certain M&D Licensees may be granted unescorted access to the radionuclides of concern at an IC Licensee facility, even though non-M&D service provider Licensees provide similar services and have the same degree of knowledge of the devices they service as M&D Licensees. To maintain appropriate access control to the radionuclides of concern, and to allow M&D Licensees and non-M&D service provider Licensees to have the same level of access at customers' facilities, NRC is imposing trustworthiness and reliability requirements for unescorted access to radionuclides of concern, as set forth in this Order. These requirements apply to non-M&D service provider Licensees that request and have a need for unescorted access by their representatives to the radionuclides of concern at IC Licensee facilities. These trustworthiness and reliability requirements are equivalent to the requirements for M&D Licensees who perform services requiring unescorted access to the radionuclides of concern.

In order to provide assurance that non-M&D service provider Licensees are implementing prudent measures to achieve a consistent level of protection for service providers requiring unescorted access to the radionuclides of concern at IC Licensee facilities, all Licensees identified in Attachment 1 to this Order shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, because of potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted access to the radionuclides of concern, I find that the public health, safety, and interest require this Order to be effective immediately.

III

Accordingly, pursuant to Sections 81, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 20, 30 and 33, it is hereby ordered, effective immediately, that all licensees identified in attachment 1 to this order comply with the requirements set forth in this order.

A.1. The Licensee shall establish and maintain a fingerprinting program that meets the requirements of Attachment 3 to this Order for individuals that require unescorted access to the radionuclides of concern. The Licensee shall complete implementation of the requirements of Attachment 3 to this Order within one hundred eighty (180) days of the date of this Order, or before (1) providing written verification to another Licensee subject to the IC requirements, or (2) attesting to or certifying the trustworthiness and reliability of a service provider for unescorted access to the radionuclides of concern at a customer's facility.

A.2. Within ninety (90) days of the date of this Order, the Licensee shall designate a ''Reviewing Official'' for determining unescorted access to the radioactive materials as listed in Attachment 2 to this Order by other individuals. The designated Reviewing Official shall be determined to be trustworthy and reliable by the Licensee in accordance with the requirements described in Attachment 3 to this Order and must be permitted to have unescorted access to the radioactive materials listed in Attachment 2 to this Order as part of his or her job duties.

A.3. Fingerprints for unescorted access need not be taken if a designated Reviewing Official is relieved from the fingerprinting requirement by 10 CFR 73.61, or has been favorably decided by a U.S. Government program involving fingerprinting and a FBI identification and criminal history records check [2] within the last five (5) years, or for any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation [3]). The Licensee may provide, for NRC review, written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI identification and criminal history records results based upon a fingerprint identification check. The NRC will determine whether, based on the written confirmation, the designated Reviewing Official may have unescorted access to the radioactive materials listed in Attachment 2 to this Order, and therefore, be permitted to serve as the Licensee's Reviewing Official.[4]

A.4. A designated Reviewing Official may not review the results from the FBI identification and criminal history records checks or make unescorted access determinations until the NRC has approved the individual as the Licensee's Reviewing Official.

A.5. The NRC will determine whether this individual (or any subsequent

[2] Examples of such programs include (1) National Agency Check, (2) Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, (3) Bureau of Alcohol, Tobacco, Firearms, and Explosives background checks and clearances in accordance with 27 CFR Part 555, (4) Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, and (5) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade (FAST) Program. The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

[3] This documentation must allow the NRC or NRC-approved Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and a FBI identification and criminal history records check.

[4] The NRC's determination of this individual's unescorted access to the radionuclides of concern in accordance with the process described in Enclosure 4 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

Reviewing Official) may have unescorted access to the radionuclides of concern, and therefore, will be permitted to serve as the Licensee's Reviewing Official. The NRC-approved Reviewing Official shall be the recipient of the results of the FBI identification and criminal history records check of the other Licensee employees requiring unescorted access to the radioactive materials listed in Attachment 2 to this Order, and shall control such information as specified in the ''Protection of Information'' section of Attachment 3 to this Order.

A.6. The NRC-approved Reviewing Official shall determine whether an individual may have unescorted access to radioactive materials that equal or exceed the quantities in Attachment 2 to this Order, in accordance with the requirements described in Attachment 3 to this Order.

B. Prior to requesting fingerprints from a Licensee employee, a copy of this Order shall be provided to that person.

C.1. The Licensee shall, in writing, within twenty-five (25) days of the date of this Order, notify the Commission, (1) If it is unable to comply with any of the requirements described in this Order, including Attachment 3 to this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

C.2. The Licensee shall complete implementation of the requirements of Attachment 3 to this Order within one hundred eighty (180) days of the date of this Order.

C.3. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 3 to this Order. The report shall be made within twenty-five (25) days after full compliance has been achieved.

C.4. If during the implementation period of this Order, the Licensee is unable, due to circumstances beyond its control, to meet the requirements of this Order by June 14, 2010, the Licensee shall request the Commission, in writing, the need for an extension of time to implement the requirements. The request shall provide the Licensee's justification for seeking additional time to comply with the requirements of this Order.

C.5. Licensees shall notify the NRC's Headquarters Operations Office at 301–816–5100 within 24 hours if the results from a FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

Licensee responses to C.1, C.2., C.3., and C.4. above shall be submitted in writing to the Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensee responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty-five (25) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty-five (25) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web

site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty-five (25) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 16th day of December 2009.

For the Nuclear Regulatory Commission.

Robert J. Lewis,

Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials, and Environmental Management Programs.

Attachment 1: List of Applicable Materials Licensees

Redacted

Attachment 2: Table 1: Radionuclides of Concern

TABLE 1—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern [1] (TBq)	Quantity of concern [2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above [3]	([4])	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (*e.g.,* a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, *i* of radionuclide, *n*, $A_{(i,n)}$, to the quantity of concern for radionuclide *n*, $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc. * * * ≥1.

Guidance for Aggregation of Sources

NRC supports the use of the International Atomic Energy Agency's (IAEA) source categorization methodology as defined in IAEA Safety

Standards Series No. RS–G–1.9, ''Categorization of Radioactive Sources,'' (2005) (*see http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf*) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (*see http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Additional security measures apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement additional security measures. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, Licensees are to implement additional security measures.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes, ''When are sources considered collocated for purposes of aggregation?'' For purposes of the additional controls, sources are considered collocated if breaching a single barrier (*e.g.,* a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (*e.g.,* a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf–252, 0.12 TBq (3.2 Ci); Co–60, 0.18 TBq (4.9 Ci), and Pu–238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: (0.12 ÷ 0.2) + (0.18 ÷ 0.3) + (0.3 ÷ 0.6) = 0.6 + 0.6 + 0.5 = 1.7. Therefore, the sources would require additional security measures.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs–137 source and a 0.8 TBq (22 Ci) Am–241 source. In this case, the sources would require additional security measures, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir–192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require additional security measures while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (*e.g.,* a storage location may be unlocked during periods of active source usage), Licensees should, to the extent practicable, consider two modes of source usage—''operations'' (active source usage) and ''shutdown'' (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require additional security measures for each location.

Use the following method to determine which sources of radioactive material require implementation of the additional security measures:

- Include any single source equal to or greater than the quantity of concern in Table.
- Include multiple collocated sources *of the same radionuclide* when the combined quantity equals or exceeds the quantity of concern.
- For combinations of radionuclides, include multiple collocated sources of *different radionuclides* when the aggregate quantities satisfy the following unity rule: [(Amount of radionuclide A) ÷ (quantity of concern of radionuclide A)] + [(amount of radionuclide B) ÷ (quantity of concern of radionuclide B)] + etc. * * * ≥1.

Attachment 3: Requirements for Service Provider Licensees Providing Written Verification Attesting to or Certifying the Trustworthiness and Reliability of Service Providers for Unescorted Access to Certain Radioactive Material at Customer Facilities, Including Requirements for Fingerprinting and Criminal History Checks

A. General Requirements

Licensees subject to the provisions of this Order shall comply with the requirements of this attachment. The term ''certain radioactive material'' means the radionuclides in quantities equal to or greater than the quantities listed in Attachment 2 to this Order.

1. The Licensee shall provide the customer's facility written verification attesting to or certifying the trustworthiness and reliability of an individual as a service provider only for employees the Licensee has approved in writing (*see* requirement A.3 below). The Licensee shall request unescorted access to certain radioactive material at customer licensee facilities only for approved service providers that require the unescorted access in order to perform a job duty.

2. The trustworthiness, reliability, and true identity of a service provider shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check as required in Section B, verification of employment history, education, and personal references. If a service provider's employment has been less than the required three (3) years period, educational references may be used in lieu of employment history.

3. The Licensee shall document the basis for concluding that there is reasonable assurance that a service provider requiring unescorted access to certain radioactive material at a customer facility is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of the radioactive material. The Licensee shall maintain a list of service providers approved for unescorted access to certain radioactive material.

4. The Licensee shall retain documentation regarding the trustworthiness and reliability of approved service providers for three years after the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

5. Each time the Licensee revises the list of approved service providers (see requirement 3 above), the Licensee shall retain the previous list for three years after the revision.

6. The Licensee shall provide to a customer written certification for each service provider for whom unescorted access to certain radioactive material at the customer's facility is required and requested. The written certification shall be dated and signed by the Reviewing Official. A new written certification is not required if an individual service provider returns to the customer facility within three years, provided the customer has retained the prior certification.

B. Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

1. The Licensee shall fingerprint each service provider to be approved for

unescorted access to certain radioactive materials following the procedures outlined in Enclosure 3 of the transmittal letter. The Licensee shall review and use the information received from the FBI identification and criminal history records check and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (*e.g.,* a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (*e.g.,* National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program [5]) within the last five (5) years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation [6]). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of Section A of this attachment, in making a determination whether to approve and certify the individual for unescorted access to certain radioactive materials. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to certain radioactive materials.

6. The Licensee shall document the basis for its determination whether to approve the individual for unescorted access to certain radioactive materials.

C. Prohibitions

A Licensee shall not base a final determination to not provide certification for unescorted access to certain radioactive material for an individual solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

D. Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.,* law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR Part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an Official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his/her review. The Licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive material, the Licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

E. Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining whether to verify the individual for unescorted access to certain radioactive material. No individual authorized to have access to the information may re-disseminate the

[5] The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

[6] This documentation must allow the Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprints and criminal history records from the FBI, or a copy if the individual's file has been transferred:

a. For three (3) years after the individual no longer requires unescorted access, or

b. For three (3) years after unescorted access to certain radioactive material was denied.

After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E9–31147 Filed 12–31–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–49; Order No. 371]

Postal Product Price Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to change prices for a Global Plus 2 contract. This notice provides an opportunity for the public to comment.

DATES: Comments are due: January 5, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot 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, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: On December 21, 2009, the Postal Service filed a notice that prices for the Global Plus 2 contract at issue in the above-captioned proceeding will change as contemplated by the contract's terms.[1] The Notice includes three attachments: (1) A redacted version of the letter to the customer with the amended prices (Attachment 1); (2) a certified statement of compliance with 39 U.S.C. 3633(a) (Attachment 2); and (3) an application for non-public treatment for the material filed under seal (Attachment 3).

In Order No. 216, the Commission concluded that certain costs for these types of contracts are based on objective, external factors and out of the Postal Service's discretion.[2] Such objective, external factors are, in the case of the Global Direct contract filed in Docket No. CP2009–29, exchange rate fluctuations and changes in the amount Canada Post Corporation charges the Postal Service for services. *Id.* at 7. For rate changes based on these types of objective, external factors, the Commission allowed that the Postal Service could file the changes on a ''notice-type basis.'' *Id.*

The Postal Service filed the Notice because it plans on changing rates for the Global Plus 2 contract at issue in this docket. It is unclear, however, whether the planned increase is only the result of ''objective, external factors'' contemplated by Order No. 216. If the increase is based on other terms of the contract that are not ''objective, external factors,'' *i.e.*, based on Article 15, paragraph 2, of the contract, then it must be subject to the usual requirements of a competitive rate change set forth in 39 CFR 3015.5.

Because the basis for the price change in the Notice is not clear, the Commission reopens Docket No. CP2009–49 to review the proposed price change and give interested persons the opportunity to comment on whether the Postal Service's proposed rate increase is based on ''objective, external factors.'' If the change is based on such factors, Commission review may be unnecessary under the terms of Order No. 216. Comments may also address, if appropriate, whether the filings in the captioned docket are consistent with the policies of 39 U.S.C. 3632, 3633, or 3652 and 39 CFR part 3015 and 39 CFR 3020, subpart B. Comments are due no later than January 5, 2010.

[1] Notice of United States Postal Service of Change in Prices in Accordance with Order No. 216, December 21, 2009 (Notice).

[2] Docket No. CP2009–29, Order Concerning Filing of Additional Global Direct Contracts Negotiated Service Agreement, May 15, 2009 (Order No. 216).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

It is ordered:

1. The Commission reopens Docket No. CP2009–49 for consideration of the issues raised in this order.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in this proceeding are due no later than January 5, 2010.

4. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–31108 Filed 12–31–09; 8:45 am]

BILLING CODE 7710–FW–S

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–48; Order No. 370]

Postal Product Price Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to change prices for a Global Plus 2 contract. This notice provides an opportunity for the public to comment.

DATES: Comments are due: January 5, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot 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, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: On December 21, 2009, the Postal Service filed a notice that prices for the Global Plus 2 contract at issue in the above-captioned proceeding will change as contemplated by the contract's terms.[1] The Notice includes three attachments: (1) A redacted version of the letter to the customer with the amended prices (Attachment 1); (2) a certified statement

[1] Notice of United States Postal Service of Change in Prices in Accordance with Order No. 216, December 21, 2009 (Notice).

of compliance with 39 U.S.C. 3633(a) (Attachment 2); and (3) an application for non-public treatment for the material filed under seal (Attachment 3).

In Order No. 216, the Commission concluded that certain costs for these types of contracts are based on objective, external factors and out of the Postal Service's discretion.[2] Such objective, external factors are, in the case of the Global Direct contract filed in Docket No. CP2009–29, exchange rate fluctuations and changes in the amount Canada Post Corporation charges the Postal Service for services. *Id.* at 7. For rate changes based on these types of objective, external factors, the Commission allowed that the Postal Service could file the changes on a ''notice-type basis.'' *Id.*

The Postal Service filed the Notice because it plans on changing rates for the Global Plus 2 contract at issue in this docket. It is unclear, however, whether the planned increase is only the result of ''objective, external factors'' contemplated by Order No. 216. If the increase is based on other terms of the contract that are not ''objective, external factors,'' *i.e.*, based on Article 15, paragraph 2, of the contract, then it must be subject to the usual requirements of a competitive rate change set forth in 39 CFR 3015.5.

Because the basis for the price change in the Notice is not clear, the Commission reopens Docket No. CP2009–48 to review the proposed price change and give interested persons the opportunity to comment on whether the Postal Service's proposed rate increase is based on ''objective, external factors.'' If the change is based on such factors, Commission review may be unnecessary under the terms of Order No. 216. Comments may also address, if appropriate, whether the filings in the captioned docket are consistent with the policies of 39 U.S.C. 3632, 3633, or 3652 and 39 CFR part 3015 and 39 CFR 3020, subpart B. Comments are due no later than January 5, 2010.

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

It is ordered:

1. The Commission reopens Docket No. CP2009–48 for consideration of the issues raised in this order.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in this proceeding are due no later than January 5, 2010.

4. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–31113 Filed 12–31–09; 8:45 am]

BILLING CODE 7710–FW–S

[2] Docket No. CP2009–29, Order Concerning Filing of Additional Global Direct Contracts Negotiated Service Agreement, May 15, 2009 (Order No. 216).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61242; File No. SR–FINRA–2009–076]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Amending the FINRA Rule 9550 Series (Expedited Proceedings)

December 28, 2009.

On November 5, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the FINRA Rule 9550 Series (Expedited Proceedings). On November 17, 2009, FINRA filed Amendment No. 1. The proposed rule change would make the following changes:

—Shorten the time within which a hearing must be held from the current 60 days after a hearing request to 30 days after the request in relation to FINRA rules Rule 9551 (Failure to Comply with Public Communication Standards), Rule 9552 (Failure to Provide Information or Keep Information Current), Rule 9553 (Failure to Pay FINRA Dues, Fees and Other Charges), Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement), and Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services);

—Amend Rule 9552 to shorten the period before a suspension automatically turns into an expulsion or bar from six months to three months;

—Amend Rule 9554, to explicitly allow FINRA to take expedited action against firms or associated persons who fail to pay restitution to a third party (usually investors who have been harmed);

—Harmonize the remedy for an individual's failure to pay an arbitration award in Rule 9554 with the remedy for the same misconduct in the FINRA By-Laws (limiting the remedy against individuals in such cases to suspension, and eliminating any reference to barring individuals).

The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 25, 2009.[3] The Commission received one comment on the proposal.[4] This order approves the proposed rule change as modified by Amendment No. 1.

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 association.[5] In particular, the Commission finds 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's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal also is consistent with Section 15A(b)(7) of the Act,[7] which provides that FINRA members and associated persons must be appropriately disciplined for violations of provisions of the Act or FINRA rules. The Commission believes the proposed rule change is consistent with these purposes because it is designed to promote a reasonable, fair and efficient disciplinary process. FINRA's amendments make the timing of hearings more consistent with other hearings in the series of rules. FINRA stated that the changes to these rules are based on FINRA's experience over the last five years administering the rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61026 (November 18, 2009) 74 FR 61727.

[4] *See* December 15, 2009 letter to Elizabeth M. Murphy, Secretary, Commission, from Scott R. Shewan, President, Public Investors Arbitration Bar Association (''PIABA Letter'') in support of the proposed rule change. PIABA states ''FINRA has proposed equitable amendments and should be commended for the thoughtful treatment of the restitution issue in particular * * * the Commission should approve the amendments without delay.'' PIABA Letter at 2.

[5] 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).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78*o*–3(b)(7).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–FINRA–2009–076), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31160 Filed 12–31–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61240; File No. SR–NYSEArca–2009–101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Equities Rule 5.2(j)(3)

December 24, 2009.

On November 5, 2009, NYSE Arca, Inc. (''Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), the initial listing standards for Investment Company Units. The proposed rule change was published for comment in the **Federal Register** on November 24, 2009.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

Arca proposes to amend the initial listing standards for Investment Company Units (''ICUs''), which are based both on U.S. indexes or portfolios, and international or global indexes or portfolios. Specifically, Arca proposes to amend the trading volume listing standard to lower the minimum component stock weight requirement from 90% to 70% of the weight of the underlying index or portfolio. Arca also proposes to measure minimum monthly trading volume as averaged over the last six months. Currently, the minimum monthly trading volume is measured during each of the last six months. With respect to international or global indexes or portfolios, Arca proposes to clarify that the component stock trading volumes are determined on a global basis. Finally, as an option for meeting the listing requirements, Arca proposes to adopt a minimum notional volume traded per month of $25,000,000, also averaged over the last six months.

The Commission has carefully reviewed the proposed rule change and 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[4] and, in particular, Section 6(b)(5) of the Act,[5] which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The Commission believes that the proposed 70% weighting requirement should: (1) Be sufficient to help ensure that a substantial portion of the underlying index or portfolio remains liquid; and (2) facilitate the listing and trading of ICUs benefit investors by providing them with a wider selection of derivative products. When this requirement is combined with other listing requirements, the Commission believes that the underlying index or portfolio will remain sufficiently liquid to minimize potential manipulation.

The Commission also believes that the proposed use of minimum notional volume as an alternative measure to minimum trading volume should mitigate the volume discrepancies between low- and high-priced stocks. In addition, measuring minimum trading volume and notional volume based on a six-month average should help to eliminate seasonal volume fluctuations that may occur in the trading of component securities.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2009–101) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31163 Filed 12–31–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61235; File No. SR–NYSE–2009–126]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rules 116 and 123C To Allow More Than One Closing Print To Be Reported to the Consolidated Tape for Closing Transactions That Exceed 99,999,999 Shares

December 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 16, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 proposes to amending [sic] the provisions of NYSE Rules 116 (''Stop'' Constitutes Guarantee) and 123C (Market On The Close Policy And Expiration Procedures) to allow on a temporary basis more than one closing print to be reported to the Consolidated Tape for closing transactions that exceed 99,999,999 shares. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61022 (November 17, 2009), 74 FR 61388 (''Notice'').

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing the Exchange seeks to amend the provisions of NYSE Rules 116.40 (''Stop'' Constitutes Guarantee) and 123C (Market On The Close Policy And Expiration Procedures) to allow more than one closing print to be reported to the Consolidated Tape for closing transactions that exceed 99,999,999 shares.

Currently, pursuant to NYSE Rules 116.40(c) and 123C(3), the closing transaction is reported to the Consolidated Tape last sale reporting system as a single transaction via a single print. As a result of a temporary size limitation in a new market data distribution system, Exchange systems currently cannot support prints greater than 99,999,999 shares.[3] Therefore, executions of greater than 99,999,999 shares must be sent to the Consolidated Tape in more than one print. The multiple prints together will reflect the cumulative volume of the single closing transaction. Because this is inconsistent with the provisions of NYSE Rules 116.40(c) and 123C(3), the Exchange proposes to amend the provisions of those rules to provide that any closing transaction exceeding 99,999,999 shares will be reported to the Consolidated Tape last sale reporting system in more than one print.[4]

The Exchange believes that reporting multiple prints will not have a detrimental effect on investors because the prints will each be marked as the closing print. Moreover, the Exchange intends to provide notice to its customers through its Trader Alert System when a closing transaction exceeds 99,999,999 shares and requires more than one print.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will facilitate the timely and efficient reporting of the closing transaction on the Exchange and thus ultimately serve to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, so that the new procedures will be operative in the event that a closing transaction whose volume exceeds 99,999,999 shares occurs in the near future. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[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–NYSE–2009–126 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–2009–126. 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

[3] The Exchange anticipates that the temporary size limitation in the new market data distribution system will be corrected by no later than the end of February 2010.

[4] On December 4, 2009, the closing transaction in Bank of America's security exceeded 99,999,999 shares. On that date the Exchange filed for a temporary exemption to the provisions of NYSE Rules 116 and 123C. *See* Securities and Exchange Act Release No. 61125 (December 7, 2009), 74 FR 66182 (December 14, 2009) (SR–NYSE–2009–122).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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,[14] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–126 and should be submitted on or before January 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31161 Filed 12–31–09; 8:45 am]

BILLING CODE 8011–01–P

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61236; File No. SR–NYSEArca–2009–113]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change for the Listing and Trading of Sprott Physical Gold Trust

December 23, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 15, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, Inc. (''Exchange''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to list and trade units[4] of the Sprott Physical Gold Trust (the ''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade units (''Units'') of the Trust under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.''[5] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 5.2(j)(6) and 8.201, respectively, shares of the streetTRACKS Gold Trust and iShares COMEX Gold Trust.[6] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.[7] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust and [sic] on the Exchange pursuant to UTP.[8] The Commission also has approved listing of the iShares Silver Trust on the Exchange[9] and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC (now known as ''NYSE Amex LLC'').[10] Further, the Commission has also approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of ETFS Silver Trust[11] and ETFS Gold Trust.[12]

Sprott Asset Management LP is the sponsor or manager of the Trust (the ''Sponsor'' or the ''Manager'',[13] as the case may be), RBC Dexia Investor Services Trust is the trustee of the Trust

[4] Each unit represents an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of units.

[5] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[6] *See* Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[7] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[8] *See* Securities Exchange Act Release No. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); Securities Exchange Act Release No. 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[9] *See* Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust).

[10] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[11] *See* Securities Exchange Act Release No. 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (approving listing on the Exchange of the ETFS Silver Trust).

[12] *See* Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (approving listing on the Exchange of the ETFS Gold Trust).

[13] The Manager is a limited partnership existing under the laws of Ontario, Canada, and acts as manager of the Trust pursuant to the Trust's trust agreement and the management agreement. The Manager provides management and advisory services to the Trust. Additional details regarding the Manager are set forth in the Registration Statement on Form F–1 for the Sprott Physical Gold Trust, filed with the Commission on December 9, 2009 (No. 333–163601) (the ''Registration Statement'').

(the ''Trustee''),[14] the Royal Canadian Mint is the custodian for the physical gold bullion owned by the Trust (the ''Gold Custodian''),[15] and RBC Dexia serves as the custodian of the Trust's assets other than physical gold bullion (the ''Non-Gold Custodian'').[16]

Listing Rules

Definition. Rule 8.201(c)(1) defines Commodity-Based Trust Shares as a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

The Trust will issue Units, each of which represents an equal, fractional undivided ownership interest in the net assets of the Trust attributable to the particular class of Units. Except with respect to cash held by the Trust to pay expenses and anticipated redemptions, the Trust expects to own only London Good Delivery physical gold bullion. The investment objective of the Trust is for the Units to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations.[17] The Trust is not actively managed and does not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of gold bullion. The Trust is neither an investment company registered under the Investment Company Act of 1940 nor a commodity pool for purposes of the Commodity Exchange Act.[18] The Units will be issued in an initial public offering. The Trust may issue additional Units (i) in future offerings if the gross proceeds received by the Trust per Unit is not less than 100% of the most recently calculated NAV or (ii) by way of a distribution in Units in connection with an income distribution. The Trust will not issue Units on an on-going or daily basis. At the start of trading the Trust will issue a minimum of 1,000,000 Units to at least 400 holders (''Unitholders''), as further described below.

The Units will be redeemable monthly at the option of the holder. The redemption process is further described below.

The Exchange represents that the Units satisfy the remaining requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[19]

Operation of the Gold Market

A detailed description of the gold market is set forth in the Registration Statement.

Secondary Market Trading and Liquidity

While the Trust's investment objective is for the Units to reflect the performance of physical gold bullion, less the expenses of the Trust, the Units may trade in the secondary market on the NYSE Arca at prices that are lower or higher relative to their net asset value per Unit (''NAV''). The NAV is expected to fluctuate with changes in the market value of the Trust's assets. The trading price of the Units will fluctuate in accordance with changes in the NAV as well as market supply and demand. The amount of the discount or premium in the trading price relative to the NAV may be influenced by non-concurrent trading hours between the NYSE Arca and the COMEX and other major world gold markets. While the Units will trade on the NYSE Arca until 4 p.m., New York time, liquidity in the global gold market will be reduced after the close of the major world gold markets, including London and of the COMEX division of the New York Mercantile Exchange at 1:30 p.m., New York time. As a result, during this time, trading spreads, and the resulting premium or discount to the NAV may widen.

Trust Expenses

The fees and expenses of the Trust are set forth in detail in the Registration Statement.

Initial Public Offering and Redemption of Units

The Trust will offer at a minimum, 1,000,000 Units in its initial public offering to a minimum of 400 Unitholders. Each Unit will represent an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of Units. It is not currently intended that the Trust will create additional Units.

Unitholders may redeem their Units on a monthly basis.

Redemption for Physical Gold

Subject to the terms of the trust agreement and the Manager's right to suspend redemptions under certain circumstances described in the registration statement, Units may be redeemed at the option of a Unitholder for physical gold bullion in any calendar month. Units redeemed for physical gold will be entitled to a redemption price equal to 100% of the NAV of the redeemed Units on the last Business Day, as defined herein, of the calendar month in which the redemption request is processed, less redemption and delivery expenses. Redemption requests for gold must be for amounts that are at least equivalent in value to one London Good Delivery bar or an integral multiple thereof, plus applicable expenses. A ''London Good Delivery bar'' contains between 350 and 430 troy ounces of gold. Any fractional amount of redemption proceeds in excess of one London Good Delivery bar or an integral multiple thereof will be paid in cash at a rate equal to 100% of the NAV of such excess amount. The ability of a Unitholder to redeem Units for physical gold bullion may be limited by the sizes of London Good Delivery bars held by the Trust at the time of the redemption. A Unitholder redeeming Units for gold will be responsible for expenses incurred by the Trust in connection with such redemption and applicable delivery expenses, including the handling of the notice of redemption, the delivery of the physical bullion for units that are being redeemed and the applicable gold storage in-and-out fees.

A redemption notice to redeem Units for physical gold bullion must be received by the Trust's transfer agent no later than 4 p.m. Toronto time, on the

[14] The Trustee holds title to the Trust's assets on behalf of the Unitholders and has, together with the Manager, exclusive authority over the assets and affairs of the Trust. The Trustee has a fiduciary responsibility to act in the best interest of the Unitholders. Additional details regarding the Trustee are set forth in the Registration Statement.

[15] The Gold Custodian will be responsible for and will bear all risk of the loss of, and damage to, the Trust's physical gold bullion that is in its custody, subject to certain limitations based on events beyond the Gold Custodian's control. The Manager, with the consent of the Trustee, may determine to change the custodial arrangements of the Trust. Additional details regarding the Gold Custodian are set forth in the Registration Statement.

[16] The Non-Gold Custodian will be responsible for and will bear all risk of the loss of, and damage to, the Trust's assets (other than physical gold bullion) that are in its custody, subject to certain limitations based on events beyond the Non-Gold Custodian's control. The Manager, with the consent of the Trustee, may determine to change the custodial arrangements of the Trust. Additional details regarding the Non-Gold Custodian are set forth in the Registration Statement.

[17] The descriptions of the Trust, the Units and the gold market contained herein are based on the Registration Statement.

[18] The Trust does not trade in gold futures contracts. The Trust takes delivery of physical gold that complies with certain gold delivery rules. Because the Trust does not trade in gold futures contracts on any futures exchange, the Trust is not regulated as a commodity pool, and is not operated by a commodity pool operator.

[19] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Securities Exchange [sic] of 1934 (''Act'') (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7).

15th day of the calendar month in which the redemption notice will be processed or, if such day is not a day on which banks located in New York, New York, are open for the transaction of banking business (a ''Business Day''), then on the immediately following day that is a Business Day. Any redemption notice received after such time will be processed in the next month.

Physical gold bullion received by a Unitholder as a result of a redemption of Units will be delivered by armored transportation service carrier pursuant to delivery instructions provided by the Unitholder. The armored transportation service carrier will be engaged by or on behalf of the redeeming Unitholder. Such physical gold bullion can be delivered (i) To an account established by the Unitholder at an institution located in North America authorized to accept and hold London Good Delivery bars; (ii) in the United States, to any physical address (subject to approval by the armored transportation service carrier); (iii) in Canada, to any business address (subject to approval by the armored transportation service carrier); and (iv) outside of the United States and Canada, to any address approved by the armored transportation service carrier. Physical gold bullion delivered to an institution located in North America authorized to accept and hold London Good Delivery bars will likely retain its London Good Delivery status while in the custody of such institution; physical gold bullion delivered pursuant to a Unitholder's delivery instruction to a destination other than an institution located in North America authorized to accept and hold London Good Delivery bars will no longer be deemed London Good Delivery once received by the Unitholder. The armored transportation service carrier will receive gold bullion in connection with a redemption of Units approximately 10 Business Days after the end of the month in which the redemption notice is processed. Any cash to be received by a redeeming Unitholder in connection with a redemption of Units for physical gold bullion will be delivered to the Unitholder's brokerage account within 10 Business Days after the calendar month in which the redemption is processed.

Redemption for Cash

Subject to the terms of the trust agreement and the Manager's right to suspend redemptions under certain circumstances described in the registration statement, Units may be redeemed at the option of a Unitholder for cash on a monthly basis. Units redeemed for cash will be entitled to a redemption price equal to 95% of the lesser of (i) the volume-weighted average trading price of the Units traded on the NYSE Arca or, if trading has been suspended on NYSE Arca, the trading price of the units traded on the Toronto Stock Exchange, for the last five Business Days of the month in which the redemption request is processed and (ii) the NAV of the redeemed Units as of 4 p.m., Toronto time, on the last Business Day of such month. Cash redemption proceeds will be transferred to a redeeming Unitholder approximately three Business Days after the end of the month in which the redemption notice is processed. See ''Redemption of Units'' for detailed terms and conditions relating to the redemption of Units for cash.

A redemption notice to redeem Units for cash must be received by the Trust's transfer agent no later than 4 p.m.. Toronto time, on the 15th day of the calendar month in which the redemption notice will be processed or, if such day is not a Business Day, then on the immediately following day that is a Business Day. Any redemption notice to redeem Units for cash received after such time will be processed in the next month.

Termination Events

The Trust will be terminated in the event there are no Units outstanding, the Trustee resigns or is removed and no successor trustee is appointed by the Manager by the time the resignation or removal becomes effective, the Manager resigns and no successor manager is appointed by the Manager and approved by Unitholders by the time the resignation becomes effective, the Manager is, in the opinion of the Trustee, in material default of its obligations under the trust agreement and does not cure such default within a certain time period, the Manager experiences certain insolvency events or the assets of the Manager have become subject to seizure or confiscation by any public or governmental authority. In addition, the Manager may, in its discretion, terminate the Trust, without Unitholder approval, if, in the opinion of the Manager, after consulting with the independent review committee, the value of net assets of the Trust has been reduced such that it is no longer economically feasible to continue the Trust and it would be in the best interests of the Unitholders to terminate the Trust, by giving the Trustee and each holder of Units at the time at least 90 days' notice. To the extent such termination in the discretion of the Manager may involve a matter that would be a ''conflict of interest matter'' as set forth in applicable Canadian regulations, the matter will be referred by the Manager to the independent review committee established by the Manager for its recommendation. In connection with the termination of the Trust, the Trust shall, to the extent possible, convert its assets to cash and, after paying or making adequate provision for all of the Trust's liabilities, distribute the net assets of the Trust to Unitholders, on a pro rata basis, as soon as practicable after the termination date.

Additional information regarding the Units and the operation of the Trust, including termination events, risks, and redemption procedures, is described in the Registration Statement.

Valuation of Gold and Definition of Net Asset Value

The value of the net assets of the Trust and the NAV will be determined daily at 4:00 p.m. (Toronto time) on each day that is a Business Day, by the Trust's valuator, which is RBC Dexia Investor Services Trust. The value of the net assets of the Trust as of the valuation time on any such day shall be equal to the aggregate fair market value of the assets of the Trust as of such date, less an amount equal to the total liabilities of the Trust (excluding all liabilities represented by outstanding Units and deferred taxes) as of such date. The valuator shall calculate the NAV by dividing the value of the net assets of the Trust on that day by the total number of Units then outstanding on such day.

The Units will be book-entry only and individual certificates will not be issued for the Units (except in connection with a redemption of Units, during the process of which redeeming Units will be certificated and presented for cancellation as part of the redemption process).

Availability of Information Regarding Gold Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Units, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service

providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at or [sic] *http://www.thebulliondesk.com.*

The Trust Web site will provide an intraday indicative value (''IIV'') per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., New York time). The IIV will be calculated based on a price of gold derived from updated bids and offers indicative of the spot price of gold.[20] In addition, the Web site for the Trust will contain the following information, on a per Unit basis, for the Trust: (a) The mid-point of the bid-ask price[21] at the close of trading in relation to the NAV as of the time the NAV is calculated (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site will provide the last sale price of the Units as traded in the US market. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Units.

A minimum of 1,000,000[22] Units will be required to be outstanding at the start of trading.[23] The minimum number of Units required to be outstanding exceeds the requirements that have been applied to previously listed shares of the streetTRACKS Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust and exchange-traded funds. A minimum of 400[24] Unitholders at the start of trading.[25] Additionally, it is anticipated that the initial price of a Unit will be approximately $10.00. The Exchange believes that the anticipated minimum number of Units outstanding at the start of trading is sufficient to provide adequate market liquidity. The Trust represented to the Exchange that, prior to listing, the NAV would be calculated daily and made available to all market participants at the same time. The Trust has also represented to the Exchange that, prior to listing, the IIV will be calculated at least every fifteen seconds and made available to all market participants at the same time.

Trading Rules

The Exchange deems the Units to be equity securities and subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Units on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Units to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying gold, related futures or options on futures or any other related derivative (including the Units).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading on the Exchange in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[26]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Units. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and

[20] The IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[21] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[22] The minimum number of Units issued is comparable to the minimum threshold established for the issuance of equity linked notes under NYSE Arca Rule 5.2(j)(2).

[23] *See* e-mail, dated December 23, 2009, from Tim Malinowski, NYSE Arca, to David Liu, Assistant Director, Division of Trading and Markets, Commission.

[24] The minimum number of holders is comparable to the minimum threshold established for the issuance of equity linked notes under NYSE Arca Rule 5.2(j)(2).

[25] *See supra* note 23.

[26] *See* NYSE Arca Equities Rule 7.12.

detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Units and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[27]

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. ETP Holders purchasing Units from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[28] of the Act, in general, and furthers the objectives of Section 6(b)(5),[29] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov. Please include File Number SR–NYSEArca–2009–113 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NYSEArca–2009–113.* 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 NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com.* 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

[27] A list of ISG members is available at *http://www.ISGPortal.org.* The Exchange notes that the New York Mercantile Exchange, of which the COMEX is a division, is an ISG member, however, the TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

should refer to File Number *SR–NYSEArca–2009–113* and should be submitted on or before January 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31162 Filed 12–31–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61241; File No. SR–CBOE–2009–100]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify CBSX Rule 51.8 To Add Pegged Cross Orders, To Add an Interpretation Regarding Pricing of Cross Orders, and To Add Greater Flexibility to Intermarket Sweep Orders

December 24, 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 23, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 modify CBSX Rule 51.8 to add a new order-type, to add an interpretation regarding CBSX pricing of cross orders, and to add greater flexibility to the CBSX intermarket sweep order process. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), on the Commission's Web site (*http://www.sec.gov*), 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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The filing proposes to make three changes to CBSX Rule 51.8. First, the proposal would allow users the ability to have any unexecuted balance of an intermarket sweep order (ISO) be booked and displayed. Currently, any unexecuted balance is cancelled. Thus, if the NBBO is 20–20.04 (500 × 100) and CBSX represents the best offer, an ISO (that is not labeled as immediate or cancel) to buy 200 shares would get filled on 100 shares at 20.04 and the balance would book as a 20.04 bid for 100 shares.

Second, the filing proposes to adopt a ''Pegged Cross Order''. This order type would allow users to send both sides of a cross with an execution price that is pegged to the national best offer or national best bid. In fast moving markets this gives users greater certainty in executing crosses while ensuring that such executions honor Protected Quotations. Pegged Cross orders are entered with a penny or subpenny amount higher (lower) than the national best bid (offer). By way of example, if the NBBO is 20–20.04 and a 7000 share Pegged Cross order priced at the bid plus .01 is received, CBSX will execute the 7000 share cross at 20.01.

If, however, a Pegged Cross is priced in a way that would cause a trade-through of a Protected Quotation, then the system will re-price the cross to a permissible trade price (i.e. the nearest price to the originally requested price that would not cause a trade-through and that would not conflict with the priority provisions of CBSX Rule 52.11.[5] For example, if the NBBO is 20–20.04 and a 7000 share Pegged Cross order priced at the bid plus .05 is received while the CBSX offer is 20.04 for 100 shares, CBSX will execute the 7000 share cross at 20.04. If the cross were only for 2000 shares, CBSX would effect the cross at 20.03 because it could not establish priority at 20.04 pursuant to Rule 52.11.

In addition, if a Pegged Cross is received when the national best offer is crossed with the national best bid, the system will cancel the order. If a Pegged Cross is received when the national best bid is locked with the national best offer, the system will attempt to execute the cross at the lock price provided such execution would not conflict with the priority provisions of Rule 52.11.

The last change proposed in this filing is to adopt language substantially similar to a provision contained in Chicago Stock Exchange Article XX, Rule 4.a.(7)(b) which allows for cross transactions to be priced in subpennies. The proposed provision, which would be contained in an interpretation to CBSX Rule 51.8 would allow crosses to be priced in increments as small as 0.0001 provided the execution is more than $0.01 better than the prevailing BBO unless the cross would already be allowed priority at the BBO pursuant to Rule 52.11.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5) of the Act[7] in particular in that, by offering users an enhanced price improvement features and greater control over order routing, it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, the filing is consistent with the Exchange's priority principles in that it complies with Exchange Rule 52.11, and the filing is consistent with existing exemption[8] to the subpenny restrictions of SEC rule 612 in that any subpenny executions effected pursuant to the proposal will occur at least one penny better than any resting customer interest in the CBSX book that has priority order a cross pursuant to CBSX Rule 52.11.

[30] 17 CFR 200.30–3(a)(12).

[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).

[5] CBSX Rule 52.11 provides that a cross can only establish priority at the disseminated CBSX bid/offer if it (i) is for at least 5000 shares, (ii) is for a principal amount of at least $100,000, and (iii) is greater in size than any single public customer order at the proposed cross price.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Exchange Act Release No. 34–54714 (November 6, 2006), 71 FR 66352 (November 14, 2006).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule 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,[9] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has requested the Commission to waive the 30-day operative delay. The Commission hereby grants such request and believes that such action is consistent with the protection of investors and the public interest.[12] The proposed changes to adopt the pegged cross order type and the interpretation regarding sub-penny pricing of cross orders are similar to rules of other national securities exchanges.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2009–100 and should be submitted on or before January 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31164 Filed 12–31–09; 8:45 am]

BILLING CODE 8011–01–P

[9] In addition, Rule 19b–4(f)(6) requires the Exchange to provide 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 has waived the pre-filing requirement in this case.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] *See, e.g.,* NYSE Arca Equities Rule 7.31(cc) (Pegged Order); ISE Stock Exchange Trading Rule 2104(i) (Pegged Orders); Chicago Stock Exchange Article 20 Rule 4(a)(7)(b) (sub-penny provision).

[14] 17 CFR 200.30–3(a)(12).

OFFICE OF SPECIAL COUNSEL

Agency Information Collection Activities; Request for Comment

AGENCY: Office of Special Counsel.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44U.S.C. Chapter 35), and implementing regulations at 5 CFR part 1320, the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of a previously approved information collection consisting of a customer survey form.

OSC is required by law to conduct an annual survey of those who seek its assistance. The information collection is used to carry out that mandate. The current OMB approval for this collection of information expired on March 31, 2009. Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on this information collection for the first time.

Comments are invited on:

(a) whether the proposed collection of information is necessary for the proper performance of OSC functions, including whether the information will have practical utility;

(b) the accuracy of OSC's estimate of the burden of the proposed collections of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments should be received by February 16, 2010.

ADDRESSES: Roderick Anderson, CFO, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 218, Washington, DC 20036-4505.

FOR FURTHER INFORMATION CONTACT: Roderick Anderson, Chief Financial Officer, at the address shown above; by facsimile at (202) 254-3715. The survey

form for the collection of information is available for review by calling OSC, or on OSC's Web site, at http://www.osc.gov/library.htm.

SUPPLEMENTARY INFORMATION: OSC is an independent agency responsible for, among other things, (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), protection of whistleblowers, and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; and (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code. OSC is required to conduct an annual survey of individuals who seek its assistance. Section 13 of Public Law 103-424 (1994), codified at 5 U.S.C. 1212 note, states, in part: ''[T]he survey shall--(1) determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel.'' The same section also provides that survey results are to be published in OSC's annual report to Congress. Copies of prior years' annual reports are available on OSC's Web site, at http://www.osc.gov/library.htmıcongress or by calling OSC at (202) 254-3600.

OSC has enhanced the effectiveness of this survey by revising the questions asked. OSC continues to use the online survey, due to its effectiveness in reducing response time.

Title of Collection: OSC Survey--

Prohibited Personnel Practice or Other Prohibited Activity (Agency Form Number OSC-48a; OMB Control Number 3255-0003)

Type of Information Collection Request: Approval of a previously approved collection of information that expired on March 31, 2009, with revisions.

Affected public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 600.

Frequency: Annual.

Estimated Average Amount of Time for a Person to Respond: 12 minutes.

Estimated Annual Burden: 109 hours.

Abstract: This form is used to survey current and former Federal employees and applicants for Federal employment who have submitted allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and whose matter has been closed or otherwise resolved during the prior fiscal year, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) apprised of his or her rights; (2) successful at the OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at the OSC.

Dated: December 18, 2009.

William E. Reukauf

Associate Special Counsel.

[FR Doc. E9–31167 Filed 12–31–09; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF STATE

[Public Notice Number 6844]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 21, 2010, at 9:30 a.m. in Conference Room 1107, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public and will last until approximately 12 p.m.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas that are assisted by the Department of State and attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the projects selected for the 2008 and 2009 Educational Assistance Program, which are under development, and an address by Dr. Thelma Melendez, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, on education matters in the United States.

Members of the public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to January 11, 2010. Each visitor will be asked to provide his/her date of birth and either driver's license or passport number at the time of registration and attendance, and must carry a valid photo ID to the meeting. Any requests for reasonable accommodation should be made at the time of registration. All such requests will be considered, however, requests made after January 11th might not be possible to fill. All attendees must use the C Street entrance to the building.

Dated: December 18, 2009.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. E9–31107 Filed 12–31–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Confidential Close Call Reporting System

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) described below is being forwarded to the Office of Management and Budget (OMB) for approval for renewal of information collection supporting a five-year research study that aims at improving rail safety by analyzing information on close calls and other unsafe occurrences in the rail industry. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on October 21, 2009 (74 FR 54116) and the comment period ended on December 21, 2009. The 60-day notice produced no comments.

DATES: Written comments should be submitted by February 3, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Demetra V. Collia, E–36, Room 314, Bureau of Transportation Statistics, Research and Innovative Technology Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; (202) 366–1610; Fax (202) 366–3676; e-mail *Demetra.Collia@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Confidential Close Call Reporting System.

Type of Request: Approval to continue to collect information on close calls.

OMB Control Number: 2139–0010.

Affected Public: Workers in the railroad industry.

Number of Respondents: 4,000.

Number of Responses: 730.

Total Annual Burden: 365.00 hours (Average estimate of 30 minutes to complete the C³RS Close Call form and employee survey, resulting in a total of 365.00 hours).

Abstract: Collecting data on the nation's transportation system is an important component of BTS's responsibility to the transportation community and is authorized in BTS statutory authority (49 U.S.C. 111(c)(1) and (2) and 49 U.S.C. 111(c)(5)(j)). The Federal Railroad Administration (FRA) and BTS share a common interest in promoting rail safety based on better data. To that end, FRA's Office of Research and Development is sponsoring the Confidential Close Call Reporting System (C³RS) Demonstration Project to investigate the effectiveness of such system in improving rail safety.

A close call represents a situation in which an ongoing sequence of events was stopped from developing further, preventing the occurrence of potentially serious safety-related consequences. This might include the following: (1) Events that happen frequently, but have low safety consequences; (2) events that happen infrequently but have the potential for high consequences (e.g., a train in dark territory proceeds beyond its authority); (3) events that are below the FRA reporting threshold (e.g., an event that causes a minor injury); and (4) events that are reportable to FRA but have the potential for a far greater accident than the one reported (e.g., a slow speed collision with minor damage to the equipment and no injuries.)

Employees involved in a close call are asked to provide information about the reported event by filling out a questionnaire and participating in a brief interview, as needed. The close call reporting form (questionnaire) asks the respondent to provide information on: (1) Name and contact information; (2) time and location of the incident; (3) a short description of the event; (4) contributing factors to the close call; and (5) any other information that might be useful in determining a root cause of such event.

BTS collects close call reports submitted by railroad employees and protects the confidentiality of these data through its own statute (49 U.S.C. 111(i)) and the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). Accordingly, only statistical and non-sensitive information will be made available through publications and reports. In addition, BTS is developing an analytical database containing the reported data and other pertinent information to determine root causes of frequently reported close calls. The database is a valuable tool to railroad carriers and the FRA in their effort to identify safety issues and provide corrective measures before an accident occurs.

Voluntary reporting of close calls to a confidential system can provide a tool to identify and correct weaknesses in railroad safety systems before an accident actually occurs. The C³RS demonstration project offers a voluntary, cooperative, non-punitive environment to communicate safety concerns. Through the analysis of close calls, the FRA and the railroad community receive information about factors that may contribute to unsafe events and the error recovery mechanisms that prevented an adverse consequence from occurring. Such information is used to develop new training programs, identify root causes of potentially adverse events, assess risk and allocate resources to address those risks more efficiently. In addition, the database provides rail safety researchers with valuable information regarding precursors to safety risks and contributes to research and development of intervention programs aimed at preventing accidents and fatalities.

It is estimated that close call reporting will take no more than 30 minutes to complete for a maximum total burden of 365.00 hours (730 reports * 30 minutes/60 = 365.00 hours). Reports are submitted when there is a qualifying event, i.e., a close call occurs within a pilot site. The frequency of such event is estimated to be approximately two per day.

ADDRESSES: The agency seeks public comments on its proposed information collection. Comments should address whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

Issued in Washington, DC on December 28, 2009.

Steven D. Dillingham,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. E9–31135 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Alton & Southern Railway

[Waiver Petition Docket Number FRA–2009–0121]

The Alton & Southern Railway Company (ALS) has petitioned for a waiver of compliance from the requirements of Title 49 CFR 229.23(d)(f), 229.27(3), and 229.29(a) as it pertains to the physical recordkeeping requirements for 92-day periodic, annual, and biennial locomotive inspection reports at mechanical facilities where the inspections are performed, and for the maintenance of a copy of the locomotive inspection and repair record in the cab of the locomotive.

Through this waiver, for all locomotives leased from the Union Pacific Railroad Company, ALS seeks to complete and maintain an electronic report of each locomotive inspection report, repair record, and a hard copy. Pursuant to Title 49 CFR 229.23(d)(f), 229.27(3), and 229.29(a), this electronic report will be maintained in a centralized computer database for the required period, and a hard copy of the

same report will be maintained in the cab of the locomotive.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0121) and may be submitted by any of the following methods:

1. *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

2. *Fax:* 202–493–2251.

3. *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

4. *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on December 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–31109 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Ashtabula, Carson & Jefferson Railroad

[Waiver Petition Docket Number FRA–2009–0089]

The Ashtabula, Carson & Jefferson Railroad (ACJR) of Jefferson City, Ohio, has petitioned for a permanent waiver of compliance for one locomotive (ACJR 7371) from the requirements of the Railroad Safety Glazing Standards, Title 49 CFR Part 223, which require certified glazing in all windows. The locomotive is equipped with Plexiglas-type safety glazing that is in good condition, clear and un-scratched.

ACJR operates over 6.3 miles of track running from the industrial area of an Ohio village through level farm lands and wooded areas to its interchange, which is also located in a rural area at speeds not exceeding ten miles per hour. ACJR states that there has been no instance of vandalism in 25 years of its operations. ACJR further states that the expense of retrofitting the locomotive to comply with FRA Safety Glazing Standards would impose an undue financial burden that ACJR cannot bear at this time. Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0089) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on December 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–31112 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0111]

Notice of Petition for Waiver of Compliance and Scheduling of Public Hearing Association of American Railroads

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides notice that the Association of American Railroads (AAR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain requirements of 49 CFR parts 234 and 236, as detailed below. FRA has assigned the petition Docket Number FRA–2009–0111.

AAR seeks a waiver on behalf of its member railroads from the monthly inspections and test requirements for signal systems set forth at 49 CFR 234.249, 234.251, 234.253, 234.255,

234.257, 234.261, 236.382, and 236.576. AAR seeks explicit authorization for its members to conduct the inspections and tests required by these regulatory provisions at intervals of up to 35 days, as opposed to at least once each month. A copy of AAR's full petition is available for review online at *http://www.regulations.gov.*

Because the time frames for conducting various inspections and tests required by 49 CFR parts 234 and 236 (including the sections at issue in AAR's waiver petition) have been the subject of much discussion in the industry over the last several years and also the subject of previous waiver requests, FRA believes holding a public hearing on the issues presented by AAR's petition would be beneficial. Accordingly, FRA invites all interested persons to participate in a public hearing addressing the time frames of the tests and inspections that are the subject of AAR's request.

DATES: (1) *Public Hearing:* A public hearing will be held on February 10, 2010, at 9:30 a.m. in Washington DC.

(2) *Comments:* Interested parties may submit comments relevant to this waiver request and/or issues discussed at the hearing to the address noted below. Such written material should be submitted by March 12, 2010. Comments submitted after that date will be considered to the extent possible.

ADDRESSES: (1) *Public Hearing:* The public hearing will be held at the Marriott Washington Wardman Park, 2660 Woodley Road, NW., Washington, DC, 20008.

(2) *Attendance:* Any persons wishing to make a statement at the hearing should notify FRA's Docket Clerk, Michelle Silva, by telephone, e-mail, or in writing, at least 5 business days before the date of the hearing. Ms. Silva's contact information is as follows: FRA, Office of Chief Counsel, Mail Stop 10, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone 202–493–6030; e-mail *michelle.silva@dot.gov.* For information on facilities or services for persons with disabilities or to request special assistance at the meeting, contact Ms. Silva by telephone or e-mail as soon as possible.

(3) *Comments:* Anyone wishing to file a comment related to this waiver petition or issues raised at the hearing should refer to FRA Docket Number FRA–2009–0111. You may submit your comments and related material by any of the following methods:

- *Internet: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

All written communications submitted in response to this notice will be available for examination at the above-facility during regular business hours (9 a.m. to 5 p.m.), Monday through Friday, except Federal holidays. All documents in the public docket are also available for inspection and download on the internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on December 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–31110 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0040]

Notice of Public Hearing; Western New York & Pennsylvania Railroad

The Western New York & Pennsylvania Railroad (WNYP) has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the traffic control signal system between milepost (MP) BR134.0 at North Driftwood, PA, and MP BR44.5 at Machias, NY, on the WNYP Buffalo Line.

This proceeding is identified as FRA block signal application Docket Number FRA–2009–0040. A copy of WNYP's full petition is available for review online at *http://www.regulations.gov* under the docket number identified above.

FRA has conducted a field investigation in this matter and has issued a public notice seeking comments from interested parties. *See* 74 FR 23466 (May 19, 2009). After examining the carrier's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal. Accordingly, FRA invites all interested persons to participate in a public hearing on February 3, 2010. The hearing will be conducted at the Allegany Community Center and Firemen's Park, 188 West Main Street, Allegany, New York 14706. The hearing will begin at 9 a.m. Interested parties are invited to present oral statements at the hearing. For information on facilities or services for persons with disabilities or to request special assistance at the hearing, contact FRA's Docket Clerk, Michelle Silva, by telephone, e-mail, or in writing, at least 5 business days before the date of the hearing. Ms. Silva's contact information is as follows: FRA, Office of Chief Counsel, Mail Stop 10, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone: 202–493–6030; e-mail: *michelle.silva@dot.gov.*

The hearing will be informal and conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25) by a representative designated by FRA. The hearing will be a non-adversary proceeding; therefore, there will be no cross-examination of persons presenting statements. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on December 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–31111 Filed 12–31–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Baker & Miller PLLC on behalf of the Kansas City Southern (WB595–7—11/12/09), for

permission to use certain data from the Board's 2008 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–31183 Filed 12–31–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Application for Conversion From: (a) OTS–Regulated, State-Chartered Savings Association to Federal Savings Association; (b) National Bank, Commercial Bank, State Savings Bank, or Credit Union to Federal Savings Association; (c) State Mutual Holding Company to a Federal Mutual Holding Company

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before March 5, 2009.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Donald W. Dwyer (202) 906–6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Application for Conversion from: (1) OTS–Regulated, State-Chartered Savings Association to Federal Saving Association; (b) National Bank, State Savings Bank, or Credit Union to Federal Savings Association; (c) State Mutual Holding Company to a Federal Mutual Holding Company.

OMB Number: 1550–0007.

Form Numbers: OTS–1582.

Regulation requirement: 12 CFR Part 516, 543, and 552.

Description: The application is reviewed to determine whether it meets applicable eligibility requirements for conversion and complies with applicable OTS policies. Applications are also reviewed to determine whether special conditions are needed to establish the institution's authority to continue activities or investments permitted under state law but not authorized for a Federal association.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 6.

Estimated Burden Hours per Responses: 4 hours.

Estimated Frequency of Response: Other.

Estimated Total Burden: 24 hours.

Dated: December 28, 2009.

Ira L. Mills,

Paperwork Clearance Officer, Office of Thrift Supervision.

[FR Doc. E9–31123 Filed 12–31–09; 8:45 am]

BILLING CODE 6720–01–P

TENNESSEE VALLEY AUTHORITY

Notice of Determinations on the PURPA Standards Set Forth in the Energy Independence and Security Act of 2007

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Determinations on the PURPA Standards set forth in the Energy Independence and Security Act of 2007.

SUMMARY: At its meeting on November 19, 2009, in Bowling Green, Kentucky, the TVA Board made its determinations on the PURPA Standards set forth in the Public Utility Regulatory Policies Act of 1978 (Pub. L. 95–617) (PURPA), as amended by the Energy Independence and Security Act of 2007 (Pub. L. 110–140) (EISA). The standards considered are listed in subsections 111(d)(16) through (19) of PURPA, as amended by EISA. The TVA Board considered the standards in accordance with PURPA and the objectives and requirements of the Tennessee Valley Authority Act of 1933, *as amended*, 16 U.S.C. 831–831ee (2006 & Supp. I 2007) (TVA Act).

FOR FURTHER INFORMATION CONTACT: Veenita Bisaria, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902, (865) 632–3939.

SUPPLEMENTARY INFORMATION: PURPA, as amended by EISA, requires TVA to consider adopting for itself and the distributors of TVA power four new PURPA standards. These four standards are identified as Integrated Resource Planning, Rate Design Modifications to

Promote Energy Efficiency Resources, Consideration of Smart Grid Investments, and Smart Grid Information. The TVA Board is charged with considering and making determinations on whether or not it is appropriate to implement each standard.

Data, views, and comments were requested from the public as to the need and desirability of adopting the standards. In addition to posting notices in the **Federal Register** on December 16, 2008, and June 25, 2009, which described the standards and solicited public input on the standards, TVA also provided a PURPA Web site (*http://www.tva.com/purpa*) for purposes of educating the public on the standards and soliciting public input. All public input received on the standards has been included in the official record and made available to the public through the Web site.

TVA's process for considering and making determinations on the new PURPA standards was carried out pursuant to the provisions of (a) PURPA, under which TVA is identified as the regulatory authority for electric utilities over which TVA has ratemaking authority, and (b) the TVA Act. After consideration of the initial comments and materials received, TVA staff developed recommendations on each of the standards. TVA subsequently requested public comment on these staff recommendations, as well as any additional comments the public might have on the four standards. All comments from the public, as well as the TVA staff recommendations, have been made a part of the official record and have been made available to the public through the Web site.

The TVA Board considered these standards on the basis of the PURPA purposes, which are the (1) Conservation of energy, (2) efficient use of facilities and resources, and (3) equity among electric consumers, and the objectives and requirements of the TVA Act. The Board took into account these considerations as well as the official record developed during the consideration process in reaching the determinations below.

The TVA Board's determinations follow.

TVA Board Determinations

Standard 16: Integrated Resource Planning

I. Standard Under Consideration

Each electric utility shall

(A) Integrate energy efficiency resources into utility, State, and regional plans; and

(B) Adopt policies establishing cost-effective energy efficiency as a priority resource.

II. Observations

The standard promotes the PURPA purpose of encouraging conservation of energy supplied by electric utilities. Energy efficiency refers to efforts that allow consumers to use less energy. On the supply or utility side, energy efficiency is accomplished through improving heat rates, reducing losses on the grid, etc. On the demand side, energy efficiency is accomplished through deployment of newer technologies, energy efficient appliances, bulbs, etc. TVA strives to secure reliable and cost effective electricity with an emphasis on energy efficiency by using a diverse resource portfolio.

TVA and distributors already have many programs that encourage energy efficiency. TVA has begun an updated and expanded integrated resource planning process (IRP) in 2009. TVA will look at cost-effective energy efficiency measures in the list of options to consider for sustainable resources, which includes renewable generation, conservation, and energy efficiency. TVA also uses a Power Supply Plan (PSP) as TVA's internal comprehensive generation and capacity planning process. The goals, tools, methodologies, and processes by which the PSP is developed support the IRP. TVA's goal is to achieve a balance between supply side and demand side alternatives to meet customer electric needs. TVA and distributors are taking steps to increase the opportunities to use energy efficiency measures to reduce peak load requirements and change end-users' load patterns in a manner that is cost effective. TVA's and distributors' efforts in energy efficiency are consistent with what is required by the proposed integrated resource planning standard.

III. Determination by the TVA Board

The standard under consideration is adopted as written.

Standard 17: Rate Design Modifications To Promote Energy Efficiency Investments

I. Standard Under Consideration

(A) *In General.* The rates allowed to be charged by any electric utility shall—

(i) align utility incentives with the delivery of cost-effective energy efficiency; and

(ii) promote energy efficiency investments.

(B) *Policy Options.* In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—

(i) Removing the throughput incentive and other regulatory and management disincentives to energy efficiency;

(ii) Providing utility incentives for the successful management of energy efficiency programs;

(iii) Including the impact on adoption of energy efficiency as one of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;

(iv) Adopting rate designs that encourage energy efficiency for each customer class;

(v) Allowing timely recovery of energy efficiency-related costs; and

(vi) Offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all the Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

II. Observations

A cost-effective energy efficiency activity is defined as one in which the cost to implement the energy efficiency (either conservation of energy or shift of energy use to a lower-cost time period) is less than or equal to the cost of continued energy use on the current basis (the status quo). The standard focuses on the role of electric rates and rate setting processes in promoting energy efficiency and energy efficient investments. In general, electric rates that accurately reflect the cost of providing electric services will incentivize cost-effective energy efficiency. If electric rates do not accurately reflect the cost of providing services, energy efficiency activities that are cost-effective in terms of real resources use may not be pursued.

The objective of public power is to minimize cost to the customers, rather than to maximize profit, so TVA and municipal and cooperative distributors of TVA power do not require incentives to pursue energy efficiency. Similarly, it may not be necessary to provide added financial incentives for TVA or for distributors of TVA power (such as higher rates of return) beyond what TVA is called upon to do under the TVA Act, which is to keep customer rates as low as feasible. However, lost revenue from a reduction in demand will need to be recovered.

Promotion of energy efficiency is a current ratemaking goal that TVA and distributors have set out in their current rate discussions. Time-of-use rates are being discussed by TVA and the distributors in current rate discussions. TVA and distributors currently have programs in this area and are also considering what non-rate programs may best incentivize cost-effective energy efficiency and demand response in the Valley. A balanced approach to cost-effective energy efficiency investments should be employed. TVA will work with distributors to develop mechanisms to ensure that distributors recover their fixed costs when cost-effective energy efficiency occurs. All policy options will be considered for applicability. TVA's efforts in promoting energy efficiency are consistent with the proposed Rate Design Modifications to Promote Energy Efficiency Investments standard.

III. Determination by the TVA Board

The standard under consideration is adopted as written.

Standard 18: Smart Grid Investments

I. Standard Under Consideration

(A) *In General.* Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State shall demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including–

(i) Total costs;
(ii) Cost-effectiveness;
(iii) Improved reliability;
(iv) Security;
(v) System performance; and
(vi) Societal benefit.

(B) *Rate Recovery.* Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

(C) *Obsolete Equipment.* Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

II. Observations

Smart Grid is not defined by EISA but generally refers to the electric grid and the intelligence behind the grid. It consists of the intelligent electronic devices (IEDs) and communications between the devices for feedback to achieve a self-healing, performance optimized electric grid.

The Customer Resources Energy Efficiency and Demand Response Group is coordinating the overall smart grid program at TVA and is partnering with Electric Power Research Institute (EPRI) and Tennessee Valley Public Power Association (TVPPA). Leadership teams will recommend the optimal approach for smart grid. The teams will also coordinate communication about smart grid activities at TVA as well as promote general education about Tennessee Valley Smart Grid Vision (TVSGV) and smart grid strategies. TVA Business Units planning smart grid projects are each responsible and accountable for developing their own business cases and cost/benefit analyses in accordance with TVA corporate guidelines. TVA is also working collaboratively with its distributors and directly-served customers to implement smart grid investments in the TVA region. TVA kicked off its TVSGV to the TVPPA Technology Application committee on January 22, 2009.

Due to smart grid's many components, it will be built incrementally. Distributors have primary responsibility to implement smart grid at the distribution level, and TVA has primary responsibility for smart grid implementation at the transmission level. The consideration and selection of smart grid investments will involve many stakeholders. Costs for smart grid will have to be recovered through rates (charged by TVA and the Distributors). The total benefits of smart grid can only be realized if suitable rate structures are in place. TVA and distributors are currently working on the rate redesign efforts.

Current TVA and distributor practices are consistent with the intent of this standard. The smart grid investment evaluation factors outlined in subsection A of the proposed standard should be employed by TVA and distributors in their consideration of smart grid investments. The Rate Recovery provisions contained in subsection B and the Obsolete Equipment provisions in subsection C employ a rate of return perspective that applies to investor-owned utilities. Recovering costs and dealing with obsolete equipment are the Board's responsibility to handle under the TVA Act and in accordance with TVA's objective of keeping rates as low as feasible. Accordingly, the proposed consideration of the smart grid investments standard was revised to better fit TVA's circumstances.

III. Determination by the TVA Board

The standard under consideration is revised and adopted as follows:

(A) *In General.* Prior to undertaking investments in nonadvanced grid technologies, TVA and distributors shall consider an investment in a qualified smart grid system based on appropriate factors, including–

(i) Total costs;
(ii) Cost-effectiveness;
(iii) Improved reliability;
(iv) Security;
(v) System performance; and
(vi) Societal benefit.

(B) *Rate Recovery and Obsolete Equipment.* The cost of capital, operating expenditures, or other costs related to the deployment of a qualified smart grid system and equipment rendered obsolete by such deployment, as power system costs, should be recovered through the application of TVA's power rates in a manner determined by the TVA Board pursuant to the TVA Act.

Standard 19: Smart Grid Information

I. Standard Under Consideration

(A) *Standard.* All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).

(B) *Information.* Information provided under this section, to the extent practicable, should include:

(i) *Prices.* Purchasers and other interested persons shall be provided with information on

(I) time-based electricity prices in the wholesale electricity market; and

(II) time-based electricity retail prices or rates that are available to the purchasers.

(ii) *Usage.* Purchasers shall be provided with the number of electricity units, expressed in kilowatt hours (kWh), purchased by them.

(iii) *Intervals and Projections.* Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and usage information, where available, and shall include a day-ahead projection of such price information to the extent available.

(iv) *Sources.* Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

(C) *Access.* Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

II. Observations

There are two major benefits to providing smart grid information. First, it helps customers better manage their usage, which reduces their overall electricity costs and helps TVA reduce its peak demand. Second, the price and usage information provides detailed electric market and system information to the public. Researchers and other interested parties can learn more about demand elasticity, income response, and other factors influencing energy markets over time. This information can also be used by policymakers to make better decisions. The intent of the standard is consistent with TVA's objective to provide power at the lowest feasible rates. However, TVA and distributors do not currently have all elements of smart grid investments in place. The details regarding how smart grid information will be made available and the timing of its implementation across the Valley cannot be specified at this time and, as such, will evolve as these programs mature. It is important that cost-effectiveness tests be applied in making decisions on what information is made available to consumers. The trade-offs between security and ease of providing this information should also be evaluated.

In addition, due to TVA's unique structure, its relationship with 158 distributors, and the different stages of implementation of smart grid by distributors, TVA staff does not believe it is appropriate for TVA to apply a uniform customer information standard to its power distributors. Accordingly, the standard was revised to account for such circumstances.

III. Determination by the TVA Board

The standard under consideration is revised and adopted as follows:

TVA will endeavor to provide power distributors and directly served customers with appropriate price and usage information to facilitate cost-effective smart grid and other energy efficiency activities in the Valley. TVA also will work with power distributors on a cooperative basis to make available information systems and data that will facilitate cost-effective smart grid and energy efficiency activities at the distributor retail level. TVA will prepare and present to distributor and directly served customers on an annual basis information on sources of generation by fuel type and estimated greenhouse gas emissions. TVA recommends that this information be shared with the distributors' retail customers where possible.

Dated: December 23, 2009.

Maureen H. Dunn,

Executive Vice President and General Counsel.

[FR Doc. E9–31128 Filed 12–31–09; 8:45 am]

BILLING CODE 8120–08–P

Federal Register

Monday,
January 4, 2010

Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program: Test Procedures for Walk-In Coolers and Walk-In Freezers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–TP–0014]

RIN 1904–AB85

Energy Conservation Program: Test Procedures for Walk-In Coolers and Walk-In Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: Pursuant to the Energy Policy and Conservation Act, as amended, the U.S. Department of Energy (DOE) is proposing test procedures for measuring the energy consumption of walk-in coolers and walk-in freezers (collectively ''walk-in equipment'' or ''walk-in(s)''), definitions to delineate the products covered by the test procedures, and provisions (including a sampling plan) for manufacturers to implement the test procedures. The notice also addresses enforcement issues as they relate to walk-in equipment. Concurrently, DOE is undertaking an energy conservation standards rulemaking for this equipment. Any data gathered through the use of the test procedure adopted by DOE will be used in evaluating any potential standards for this equipment. Once these standards are promulgated, the adopted test procedures will be used to determine equipment efficiency and compliance with the standards.

DATES: DOE will hold a public meeting in Washington, DC on Thursday, February 11, 2010, beginning at 9 a.m. DOE must receive requests to speak at the meeting before 4 p.m., Thursday, January 28, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, January 28, 2010.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before or after the public meeting, but no later than March 22, 2010. See section V, ''Public Participation,'' of this NOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures, requiring a 30-day advance notice. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Any comments submitted must identify the NOPR for Test Procedures for Walk-in Coolers and Freezers, and provide docket number EERE–2008–BT–TP–0014 and/or Regulation Identifier Number (RIN) 1904–AB85. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

2. *E-mail: WICF-2008-TP-0014@hq.doe.gov*. Include the docket number EERE–2008–BT–TP–0014 and/or RIN 1904–AB85 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2192, *Charles.Llenza@ee.doe.gov* or Mr. Michael Kido, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8145, *Michael.Kido@hq.doe.gov*.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975, as amended (EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part C of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) (These parts were subsequently redesignated as Parts A and A–1, respectively, for editorial reasons.) Section 312 of the Energy Independence and Security Act of 2007 (EISA 2007) further amended EPCA by adding certain equipment to this energy conservation program, including walk-in coolers and walk-in freezers (collectively ''walk-in equipment'' or ''walk-ins''), the subject of this rulemaking. (42 U.S.C. 6311(1), (2), 6313(f) and 6314(a)(9))

EPCA defines walk-in equipment as follows:

(A) In general.—

The terms ''walk-in cooler'' and ''walk-in freezer'' mean an enclosed storage space refrigerated to temperatures, respectively, above, and at or below 32 degrees Fahrenheit that can be walked into, and has a total chilled storage area of less than 3,000 square feet.

(B) Exclusion.—

The terms ''walk-in cooler'' and ''walk-in freezer'' do not include products designed and marketed exclusively for medical, scientific, or research purposes. (42 U.S.C. 6311(20))

Walk-ins covered by this rulemaking may be located indoors or outdoors. They may be used exclusively for storage, but they may also have transparent doors or panels for the purpose of displaying stored items. Examples of items that may be stored in walk-ins include, but are not limited to, food, beverages, and flowers. DOE notes that any equipment that meets the above definition is potentially subject to regulation.

Under the Act, the overall program consists essentially of the following parts: testing, labeling, and Federal energy conservation standards. The testing requirements for covered equipment consist of test procedures, prescribed under EPCA. These test procedures are used in several different ways: (1) Any data from the use of these procedures are used as a basis in developing standards for covered products or equipment; (2) the test procedure is used when determining equipment compliance with those standards; and (3) manufacturers of covered equipment must use the procedure to establish that their equipment complies with energy conservation standards promulgated pursuant to EPCA and when making representations about equipment efficiency.

Section 343 of EPCA (42 U.S.C. 6314) sets forth generally applicable criteria and procedures for DOE's adoption and amendment of such test procedures. That provision requires that the test procedures promulgated by DOE be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of the covered equipment during a representative average use cycle. It also requires that the test procedure not be unduly burdensome to conduct. See 42 U.S.C. 6314(a)(2). As part of the process for promulgating a test procedure, DOE must publish the procedure that it plans to propose and offer the public an opportunity to present oral and written comments on them. Consistent with Executive Order 12889 and EPCA (see 42 U.S.C. 6314(b)), DOE provides a minimum comment period of 75 days on a proposed test procedure. As to the test procedures for walk-in equipment, EPCA prescribes the following requirements:

(A) In general.—

For the purpose of test procedures for walk-in coolers and walk-in freezers:

(i) The R value shall be the 1/K factor multiplied by the thickness of the panel.

(ii) The K factor shall be based on ASTM [American Society for Testing and Materials] test procedure C518–2004.

(iii) For calculating the R value for freezers, the K factor of the foam at 20 °F (average foam temperature) shall be used.

(iv) For calculating the R value for coolers, the K factor of the foam at 55 °F (average foam temperature) shall be used.

(B) Test Procedure.—

(i) In general.—Not later than January 1, 2010, the Secretary shall establish a test procedure to measure the energy-use of walk-in coolers and walk-in freezers.

(ii) Computer modeling.—The test procedure may be based on computer modeling, if the computer model or models have been verified using the results of laboratory tests on a significant sample of walk-in coolers and walk-in freezers. (42 U.S.C. 6314(a)(9))

On February 4, 2009, DOE held a public meeting on the framework document it issued concerning the DOE rulemaking to evaluate walk-in equipment for energy conservation standards. See 74 FR 411 (Jan. 6, 2009) and 74 FR 1992 (Jan. 14, 2009). Both the framework document and meeting discussed the possible test procedures for this equipment that DOE was considering at that time, and gave interested parties an opportunity to submit comments. Today's notice addresses those comments and proposes test procedures for walk-in equipment.

II. Summary of the Proposal

In today's notice, DOE proposes to adopt new test procedures for determining the energy use of walk-in cooler and walk-in freezer equipment to address the statutory requirement to establish a test procedure by January 1, 2010. (42 U.S.C. 6314(a)(9)(B)) Concurrently, DOE is undertaking an energy conservation standards rulemaking for walk-in equipment to address the statutory requirement to establish performance standards no later than January 1, 2012. (42 U.S.C. 6313(f)(4)(A)) DOE will use any data resulting from use of the test procedure that DOE adopts to evaluate potential performance standards for this equipment. Furthermore, once performance standards are issued, manufacturers would be required to use the test procedures to determine compliance with such standards and for any representations regarding the energy use of walk-in equipment they produce. This test procedure, once adopted, would serve as the means for ascertaining compliance with the appropriate standards in an enforcement action.

For the reasons described below, DOE proposes to adopt a test procedure that contains two separate test methods. This approach is necessary because there are typically two manufacturers of walk-in equipment: One who manufactures the envelope (*i.e.*, the insulated box in which the refrigerated or frozen items are stored) and one who manufactures the refrigeration system (*i.e.*, the mechanism that provides the means by which to feed chilled air into the envelope). One method determines the

energy consumption of the refrigeration system of the walk-in cooler or freezer. The other method determines the energy consumption of the envelope, which is the sum of the energy use associated with heat transmission through the envelope in the form of conduction through the walls and air infiltration through openings, and the power consumed by electrical components that are part of the envelope. Each of the two components, the refrigeration system and the envelope, is considered separately and the energy consumption of each component is calculated using the applicable test procedure. DOE believes that the approach is consistent with the requirements in EPCA because the results of the two tests will represent, in the aggregate, the total energy consumption of walk-in coolers and freezers.

Using this approach, DOE believes that the proposed test procedures will adequately measure the energy consumption of walk-in equipment by capturing the energy consumption of both components. However, DOE requests comment from stakeholders on improvements or changes to the proposed test procedures and will consider modifications that improve the accuracy, appropriateness for the equipment being tested, repeatability of test results for the same or similar units, comparability of results for different types of units, burden on manufacturers, precision of language, or other elements of the procedures. In submitting comments, interested parties should state the nature of the recommended modification and explain how it would improve upon the test procedure proposed in this NOPR. Commenters should also submit data, if any, to support their positions.

DOE's adoption of the proposed test procedures, which would be applicable to all walk-in equipment, would not necessarily mean that DOE would adopt a single energy conservation standard or set of labeling requirements for all walk-in equipment. In the separate rulemaking proceeding concerning energy conservation standards for walk-in equipment, DOE may divide such equipment into classes and may conclude that standards are not warranted for some classes of equipment that are within the scope of today's test procedure. Furthermore, DOE may create a separate standard for each class of equipment that includes a utility- or performance-related feature that another equipment class lacks, and that affects energy consumption.

DOE also notes that the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs Federal agencies to use voluntary consensus standards in lieu of Government standards whenever possible. Consequently, as described in the following paragraphs, DOE attempted to incorporate by reference in its test procedures generally accepted rules or recognized industry standards such as those issued by the Air-Conditioning, Heating and Refrigeration Institute (AHRI), the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), the American National Standards Institute (ANSI), and/or ASTM International (ASTM), that provide either specific aspect(s) of the test procedure, or the complete test procedure, for the specified equipment.

III. Discussion

In the following section, DOE describes the overall approach it proposes to follow with respect to the adoption of a test procedure for walk-ins. This approach results from the characteristics of walk-in equipment and is based in part on the basic model definition that DOE currently uses to help establish testing requirements for manufacturers to follow. The following section also addresses issues raised by commenters, which included: Manufacturers (Craig Industries (Craig), Manitowoc, Nor-Lake); trade associations (AHRI); utility companies (Southern California Edison (SCE), Sacramento Municipal Utility District (SMUD), San Diego Gas and Electric (SDG&E)); and advocacy groups (Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Natural Resources Defense Council (NRDC), Northwest Energy Efficiency Alliance (NEEA)).

A. Overall Approach

DOE developed today's proposed test procedure to set forth the testing requirements for walk-in equipment. In the framework document, DOE considered two overall approaches manufacturers could take to determine the energy consumption of walk-in coolers and freezers. First, DOE considered using a modified version of the Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets'' (ARI 1200–2006), which uses the test method described in the American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ANSI/ASHRAE) Standard 72–2005, ''Method of Testing Commercial Refrigerators and Freezers'' (ANSI/ASHRAE 72–2005). Second, DOE considered allowing manufacturers to determine the efficiency of some of their products using alternative efficiency determination methods (AEDMs). (An AEDM is a predictive mathematical model, developed from engineering analyses of design data and substantiated by actual test data, which represents the energy consumption characteristics of one or more basic models.)

DOE received comments on these proposed approaches, many of which were opposed to both approaches. The comments DOE received, and DOE's responses, are discussed in more detail below. After considering these comments and reviewing the matter further, DOE is proposing separate test procedures for the envelope (insulated box) and the refrigeration system. DOE discusses the details of its proposals and addresses manufacturer comments in the following subsections.

1. Basic Model

Under EPCA, which prohibits the distribution in commerce of covered equipment that do not comply with the applicable standard, each model of covered equipment is potentially subject to energy efficiency testing consistent with the relevant requirements for that equipment. However, walk-in manufacturers typically make numerous envelope models and, even within a single model, the units are often customized in multiple ways. To reduce this potential burden, DOE proposes following the approach it has used for other equipment by allowing manufacturers to group equipment or models with essentially identical energy consumption characteristics into a single family of models, called a basic model. This concept has been established both for residential appliances and commercial and industrial equipment covered under EPCA. (See Title 10 of the Code of Federal Regulations (10 CFR) 430.2, which covers 26 products, and 10 CFR 431.12, 431.62, 431.132, 431.172, 431.192, 431.202, 431.222, 431.262, and 431.292, which cover various equipment.)

Walk-in refrigeration systems are often manufactured according to the same basic blueprint design, and any particular model could incorporate modifications that do not significantly affect the energy efficiency of the system. For example, manufacturers often sell systems that are designed to operate at different voltages. This allows them to market to customers with different electrical capabilities. The operating voltage affects the energy

efficiency of the system, but very minimally. If manufacturers were required to test the efficiency of each model with a different feature, the testing burden would be significant, but yield effectively redundant results. Therefore, DOE provides for testing of a basic model of refrigeration systems that may not be identical, but would not have any electrical, physical, or functional characteristics that significantly affect energy consumption. Features that may affect the energy consumption of walk-in cooler and freezer refrigeration systems include compressor size, fan motor type, and heat exchanger coil dimensions.

Walk-in envelopes are often manufactured according to the same basic design, but the equipment is so highly customized that each walk-in a manufacturer builds may be unique, and potentially subject to testing as a separate basic model. For instance, changing the size of the envelope would affect the energy consumption obtained by the test procedure, even if the construction methods and materials were the same. To address this possibility, DOE proposes (1) grouping walk-in envelopes with essentially identical construction methods, materials, and components into a single basic model, and (2) adopting a calculation methodology for determining the energy consumption of units within the basic model. This methodology would require a manufacturer to test one unit of the basic model and then calculate daily energy consumption coefficients (DECCs) for that basic model according to the test procedure. The manufacturer could then apply those DECCs to other units within a basic model even if those units were not identical, to obtain the energy consumption of those units. Although units within a basic model need not share identical dimensions, finishes, and non-energy-related features (*e.g.*, shelving or door kick plates), they must have been manufactured using substantially the same construction methods, materials, and components. A few examples of factors that would necessitate a different basic model include changing the type of insulating foam, the method of locking together the panels of the walk-in envelope, or the electrical characteristics of the lighting. Examples of factors that may not constitute a different basic model include the type of exterior metal finish, the dimensions of the envelope, and the number of doors of the same type. The exterior metal finish would not have a substantial impact on the efficiency of the envelope. Dimensions and number of doors, on the other hand, would be accounted for in the energy consumption calculation using the DECCs from the unit of the basic model that was tested. (See section III.B.3.f for further discussion of DECCs.)

All of the equipment included in a basic model must be within the same equipment class. Components of similar design may be substituted in a basic model without requiring additional testing if the represented energy consumption measurements continue to satisfy the provisions for sampling and testing. Only representative samples within each basic model would be tested.

For walk-ins, DOE is considering adopting the following definition of ''basic model:'' ''Basic Model means all units of a given type of walk-in equipment manufactured by a single manufacturer, and—(1) With respect to envelopes, which do not have any differing construction methods, materials, components, or other characteristics that significantly affect the energy consumption characteristics. (2) With respect to refrigeration systems, which have the same primary energy source and which do not have any differing electrical, physical, or functional characteristics that significantly affect energy consumption.'' DOE requests comment on its proposed basic model approach.

2. Approach Option 1: Test the Unit as a Whole

In the framework document, DOE considered developing a test procedure for walk-ins by adapting an existing test procedure for commercial refrigeration equipment, such as ARI 1200–2006. This approach would require an entire walk-in cooler or freezer to be physically tested within a controlled test chamber in order to evaluate its energy consumption over a period of time. During the standards framework public meeting, DOE requested comments on the feasibility of this approach. Interested parties responded with significant reservations about using a modified version of the ARI 1200–2006 test procedure, citing crucial differences between walk-ins and commercial refrigeration equipment.

In particular, interested parties noted that walk-ins are physically different from commercial refrigerators in ways that make a full-system test burdensome or impractical. Manitowoc stated that for very large walk-ins, around the 3,000-square-foot limit in the EPCA definition, manufacturers might not have a large enough test facility to make the measurements necessary for the ARI 1200–2006 test procedure in a controlled environment. (Manitowoc, Public Meeting Transcript, No. 15 at p. 59) (In this and subsequent citations, ''Public Meeting Transcript'' refers to the transcript of the February 4, 2009, public meeting on standards for walk-in coolers and freezers. ''No. 15'' refers to the document number of the transcript in the Docket for the DOE rulemaking on standards for walk-in coolers and freezers, Docket No. EERE–2008–BT–TP–0014; and the page references refer to the place in the transcript where the statement preceding appears.) Kason Industries also stated that it would be practically impossible to have a large enough controlled climate enclosure to test medium to large walk-ins, and added that if a walk-in were a free-standing structure, testing it as a whole building would not be practical. (Kason, No. 16 at pp. 1, 4) (In this and subsequent citations, the document number refers to the number of the comment in the Docket for the DOE rulemaking on standards for walk-in coolers and freezers, Docket No. EERE–2008–BT–TP–0014; and the page references refer to the place in the document where the statement preceding appears.) The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) stated that the proposed test procedures were not practical because it would be costly to physically test walk-ins. (AHRI, No. 33 at p. 2)

Commenters also noted that the market for walk-in coolers and freezers is structured differently from the market for commercial refrigeration equipment, making a direct comparison between these types of equipment difficult. Manitowoc stated that the envelope of a particular unit of walk-in equipment may be manufactured by one company and the refrigeration system by another company. ARI 1200–2006 would require the two systems to be integrated before running the test, which would place the burden on the installer or someone beyond the manufacturer of the subsystems. (Manitowoc, Public Meeting Transcript, No. 15 at p. 59) AHRI agreed that the ARI 1200–2006 standard might not be the right approach and that DOE would need to separate the mechanical system from the envelope. (AHRI, Public Meeting Transcript, No. 15 at p. 62)

In addition to these concerns, commenters identified a deficiency in the ARI 1200–2006 test procedure. SCE stated that the majority of potential energy savings can be achieved using floating head pressure and variable-speed evaporator fans, both of which have varying effects depending on the time of day and the regional climate

because the savings associated with each feature can depend on the ambient temperature and usage patterns of the walk-in over the course of a day. Because ARI 1200–2006 is a steady-state test, it would not capture the energy savings from either option. (SCE, Public Meeting Transcript, No. 15 at p. 63) AHRI agreed that the test procedure should capture savings from a control strategy or variable-speed components, both of which could optimize the operation of the walk-in for a variety of ambient conditions and usage patterns. An example of optimization would be allowing elements of the refrigeration system to turn off or reduce their operation at night when the walk-in is not being accessed. (AHRI, No. 33 at p. 2)

After considering these comments, DOE believes that an adapted version of ARI 1200–2006 would be inadequate to use as the test procedure for walk-in equipment. ARI 1200–2006 contains too many limitations and practical difficulties that would make it very difficult to effectively implement as a workable test procedure for walk-in. Therefore, DOE is no longer considering this approach.

3. Approach Option 2: Allow Manufacturers To Use Alternative Energy Determination Methods (AEDMs)

DOE's framework document also presented an alternative that would permit the use of an AEDM when determining walk-in energy consumption to help relieve the testing burden on manufacturers. An AEDM is a predictive mathematical model, developed from engineering analyses of design data and substantiated by actual test data which represents the energy consumption characteristics of one or more basic models. After confirming the accuracy of an AEDM, the manufacturer would apply the AEDM to basic models to determine their energy consumption without conducting any physical testing.

Applying this approach, the manufacturer would confirm the accuracy of the AEDM using the following method. First, the manufacturer would determine through actual testing the energy consumption of a certain number of its basic models that would be selected in accordance with criteria specified in the procedure. Second, the manufacturer would apply the AEDM to these same basic models. The AEDM would be considered sufficiently accurate only if: (1) The predicted total energy consumption of each of these basic models, calculated by applying the AEDM, is within a certain percentage of the total energy consumption determined from the testing of that basic model; and (2) the average of the predicted total energy consumption for the tested basic models, calculated by applying the AEDM, is within a certain percent of the average of the total energy consumption determined from testing these basic models. Under this approach, once the manufacturer verifies the accuracy of the AEDM, the manufacturer can use the AEDM to determine the energy consumption of other basic models without having to test those models. DOE requested comments on this approach during the framework public meeting, both in terms of how to implement the approach and whether such an approach was valid for walk-ins at all. DOE received several relevant comments, which are described and addressed below.

Given the unprecedented nature of using an AEDM to rate this type of equipment, DOE needed to determine both an appropriate sample size for verifying an AEDM and an acceptable minimum accuracy percentage for an AEDM. During the framework public meeting, DOE requested comments on these two values. AHRI could not provide feedback on how accurate the AEDM should be because DOE had not yet determined the test metric to apply. (AHRI, Public Meeting Transcript, No. 15 at p. 69) Manitowoc agreed that the test methodology needs to be established and experiments conducted to collect data that would be used to validate AEDMs. (Manitowoc, Public Meeting Transcript, No. 15 at p. 70) In a written comment, Kason Industries stated that an AEDM with a minimum accuracy of 66 percent would encompass a majority of the wide range of walk-in cooler and freezer applications. (Kason, No. 16 at p. 2) No commenter provided substantive data that DOE would use in its analysis to help support a particular sample size. Accordingly, DOE did not receive enough data from stakeholders that could help it determine an appropriate sample size or accuracy range to substantiate an AEDM.

During the public meeting, DOE also requested comments on the possibility of allowing manufacturers to take this approach to rate their walk-ins. Kason stated that an AEDM procedure would be preferable to using a physical test because the majority of walk-ins are custom-made by size, ambient temperature, and refrigeration demands. Therefore, it would be very difficult to create a test procedure that encompasses the range of walk-in equipment. (Kason, No. 16 at p. 1) Kason suggested that, as an alternative to testing the system as a whole, an AEDM could be based on determining efficiencies and performance characteristics for the principal components of a walk-in considering three factors: insulation and air tightness of the external envelope and door, efficiency of the refrigeration system for steady-state storage load (similar to the efficiency rating system for HVAC), and performance of the refrigeration system for removal of process heat and equipment-generated heat. (Kason, No. 16 at p. 2)

Other interested parties commented that allowing manufacturers to develop their own calculation methodology or software program as an AEDM could be problematic. Owens Corning questioned whether there could be a comparison among ratings published by manufacturers that developed different AEDMs. (Owens Corning, Public Meeting Transcript, No. 15 at p. 64) Craig stated that manufacturers who devise their own test procedures could write them in a way that benefits their own company. (Craig, Public Meeting Transcript, No. 15 at pp. 68–69) SCE stated that allowing manufacturers to develop their own software as an AEDM could be unfair to manufacturers with fewer resources, because the software is expensive and time-consuming to develop. Instead, SCE suggested that it would be better to have a transparent analysis method with the algorithms available to all participants and the data in a standardized format. (SCE, Public Meeting Transcript, No. 15 at p. 71) Craig replied that many manufacturers have sizing programs, which may be proprietary, to calculate the total load of the walk-in, accessories, and product load, and to size the refrigeration system properly for the energy requirements of the envelope. (Craig, Public Meeting Transcript, No. 15 at pp. 77–78 and No. 22 at p. 4) However, Craig stressed that requiring manufacturers to follow the same model developed or approved by DOE, would be fair to different manufacturers and provide consistent information to end users. (Craig, Public Meeting Transcript, No. 15 at p. 94 and No. 22 at p. 5)

ACEEE asserted that it would be difficult for DOE to work with many proprietary models, some of which might be difficult to verify. (ACEEE, Public Meeting Transcript, No. 15 at p. 94) NEEA also said that if an AEDM were used, the software should be equally available to all manufacturers and code officials for the purpose of determining compliance. (NEEA, No. 18 at p. 3) Crown Tonka stated that a standard configuration and standard test should be developed to create a baseline

for energy usage, with normalizing factors associated with configuration changes. (Crown Tonka, No. 23 at p. 1) Owens Corning reiterated that a single AEDM should be accepted to keep comparisons consistent. (Owens Corning, No. 31 at p. 2)

DOE had previously understood that manufacturers would develop their own AEDMs and would verify their accuracy by testing a small number of walk-in models. However, as discussed above, most interested parties indicated that allowing manufacturers to develop their own rating calculations or software could be problematic, despite the fact that the calculations and software would need to be verified. Therefore, DOE does not propose to allow manufacturers to develop their own AEDMs. Instead, DOE developed its own calculation methodology for manufacturers to use in rating similar, but not identical, units of walk-in equipment. For further discussion on this methodology, see section III.B.3.f.

4. Proposed Option and Recommendation: Separate Envelope and Refrigeration Tests

Both methods described above were predicated on the assumption that an entire walk-in unit is manufactured by a single entity, which could either test the walk-in as a whole according to ARI Standard 1200–2006, or calculate the overall efficiency using an AEDM. In fact, as DOE learned, most walk-ins have two main manufacturers: One who manufactures the envelope and one who manufactures the refrigeration system that cools the interior of the envelope. (Other manufacturers may be involved in producing secondary components —such as fan assemblies or lighting— that are then purchased by the main manufacturers and incorporated as part of the refrigeration system or envelope.) These two parts are manufactured separately, and are often assembled together in the field by a third-party contractor who may not have been responsible for the manufacture of either part, and who may not have testing or evaluation capabilities. Because of this situation, DOE developed, and is proposing, a different approach for testing walk-ins, as described below.

Specifically, DOE proposes separate test procedures for the envelope and the refrigeration system. The envelope manufacturer would be responsible for testing the envelope according to the envelope test procedure, and the refrigeration system manufacturer would be responsible for testing the refrigeration system according to the refrigeration system test procedure. Such an approach would be more likely to generate usable data in support of standards for both the envelope and the refrigeration system during the development of any energy conservation standards for walk-in coolers and freezers. The two test procedures are described in sections III.B and III.C, respectively.

There are several advantages to this approach. First, having separate test procedures would allow individual component manufacturers to test their components—the envelope and the refrigeration system. These component manufacturers would be more likely to have access to the resources, equipment, and personnel needed to conduct the tests. On the other hand, the ''manufacturer'' of an entire walk-in system (*i.e.,* envelope and refrigeration system combined), could be a third party: A contractor who assembles the walk-in from the separate components and/or installs it in the field. This third-party assembler may even be the end-user or owner of the equipment. If a walk-in is assembled in the field, testing of the entire assembled system may not be feasible due to lack of expertise and the need for additional testing equipment.

Second, this approach would result in a significantly reduced testing burden while ensuring compliance with any standard DOE may develop. There are many more assemblers and installers of walk-ins than there are component manufacturers. Because EPCA requires manufacturers to demonstrate compliance with energy conservation standards, interpreting the term ''manufacturer'' to include assemblers and installers, who may be contractors or end-users, to demonstrate compliance with a standard would impose the compliance burden on entities who, more likely than not, may not have participated in the design and manufacture (and therefore energy efficiency) of the component parts. Furthermore, this approach would create substantial difficulties for DOE to enforce any standards it promulgates for walk-in equipment. While DOE considered the possibility that including assemblers and installers as parties involved in the manufacture of this equipment could encourage these parties to take steps to ensure that compliant equipment is installed, at this time, DOE believes that the testing burdens are best met by the envelope and refrigeration system manufacturers for the reasons discussed above. Accordingly, under today's proposal, only envelope and refrigeration system manufacturers would need to demonstrate compliance with any proposed standard through the use of the test procedure. (DOE notes that possible remedial action for failing to satisfy these requirements include civil penalties and injunctive relief to prevent the continued sale and distribution of noncompliant equipment.) (42 U.S.C. 6303–6304)

DOE requests comment on this proposed approach and whether it is appropriate for walk-ins.

B. Envelope

As described earlier, the envelope consists of the insulated box in which the stored items reside. The following discussion describes in greater detail the test procedure DOE is proposing for the walk-in envelope. DOE also addresses issues raised by interested parties.

This procedure contains the proposed methodology for evaluating the performance characteristics of the insulation as well as methods for testing thermal energy gains related to air infiltration caused by use (door openings) and imperfections in wall interfaces or door gasketing material. Heat gain due to internal electrical components is an additional consideration.

The proposed procedure utilizes the data obtained to calculate a measure of energy use associated with the envelope. In other words, the test procedure calculates the effect of the envelope's characteristics and components on the energy consumption of the walk-in as a whole. This includes the energy consumption of electrical components present in the envelope (such as lights) and variation in the energy consumption of the refrigeration system due to heat loads introduced as a function of envelope performance, such as conduction of heat through the walls of the envelope. The effect on the refrigeration system is determined by calculating the energy consumption of a theoretical, or nominal, refrigeration system, were it to be paired with the tested envelope. Using the same nominal refrigeration system characteristics allows for direct comparison of the performance of walk-in envelopes across a range of sizes, product classes, and levels of feature implementation.

The test procedure obtains a metric of energy use associated with the envelope of a walk-in cooler or freezer, consistent with the statutory requirement (42 U.S.C. 6314(a)(9)(B)(i)). For purposes of this rulemaking, DOE interprets the term ''energy use'' to describe the sum of (a) the electrical energy consumption of envelope components and (b) the energy consumption of the walk-in refrigeration equipment that is

contributed by the performance of the envelope.

1. Overview of the Test Procedure

In accordance with EPCA, DOE is developing test procedures to evaluate the energy use associated with the envelope of walk-in coolers and freezers. The walk-in envelope includes, but may not be limited to, walls, floor, ceiling, seals, windows, and/or doors comprised of single or composite materials designed to isolate the interior, refrigerated environment from the ambient, external environment. For the purposes of developing this test procedure and evaluating potential performance standards for walk-in equipment, DOE considers the envelope to also include lighting and other energy-consuming components of the walk-in that are not part of its refrigeration system (*e.g.,* motors for automatic doors, anti-sweat heaters, etc.). DOE is considering the following definition for ''envelope,'' which would be inserted into 10 CFR part 431:

(1) The portion of a walk-in cooler or walk-in freezer that isolates the interior, refrigerated environment from the ambient, external environment; and

(2) All energy-consuming components of the walk-in cooler or walk-in freezer that are not part of its refrigeration system.

DOE requests comments on this proposed definition.

DOE also evaluated several available industry test procedures to measure the energy performance of various components of the walk-in envelope, but was unable to find a test procedure that would evaluate the entire envelope system. Consequently, DOE developed its own methodology, including a prescriptive calculation procedure, which incorporates specific component tests and allows for an overall energy performance value of the envelope to be determined. The proposed test measurements and accompanying calculation procedures to ascertain the overall energy performance value are described in the following sections.

2. Test Methods

As discussed above, DOE was unable to find a single, existing comprehensive test procedure for evaluating walk-in cooler and freezer envelopes. However, DOE identified and evaluated many recognized industry standards that could be applied to the testing of certain components and characteristics of walk-in envelopes. DOE incorporated an insulation test and an air infiltration test, with some modifications, into the proposed test procedure. The evaluation process, the results of the evaluation, and details of the proposed test methods are described in the following sections.

a. Insulation

Insulation comprises a significant component of walk-in units. EPCA specifies that ASTM C518–04, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus,'' must be used, along with specific foam temperatures for freezer or cooler applications specified in EPCA, to determine the R value of individual walk-in envelope insulation materials. (42 U.S.C. 6314(a)(9)(A)) Commenters identified two issues of significance for DOE to consider when developing a test procedure for insulation: aging and moisture absorption. DOE discusses these issues in the subsections that follow.

i. Aging of Foam Insulation

EPCA requires that the test procedure for walk-ins use an R value that shall be the 1/K factor multiplied by the thickness of the panel. (42 U.S.C. 6314(a)(9)(A)) The Act does not specify when the R value should be calculated, a key issue interested parties raised at the framework public meeting. Specifying when the R-value should be calculated is a critical consideration because several sources indicate that the R-value of certain materials can change over time.

Craig stated that R values tend to deteriorate over time and that different materials exhibit unique rates of deterioration. (Craig, Public Meeting Transcript, No. 15 at p. 215 and No. 8 at p. 1) Craig expressed concern that using an initial R value (R value as measured within two weeks of manufacture) to determine compliance would ignore deterioration that occurs in blown foams over time. Craig argued that underestimating the energy use of walk-ins would be the likely outcome of using initial R-value, that it would be misleading for end-users, and that it would be inconsistent with the goals of the EISA 2007 legislation and the rulemaking process. (Craig, Public Meeting Transcript, No.15 at p. 215) A comment submitted jointly by representatives of ASAP, ACEEE, and NRDC (hereafter referred to as the ''Joint Comment'') stated that the test procedures used should account for the potential degradation of panel insulation and door seals over time. (Joint Comment, No. 21 at p. 2) Craig also recommended that DOE develop an accelerated test procedure that represents lifetime energy use and can be completed within 6 months. (Craig, No. 8 at p. 1)

In the context of foam insulation for walk-ins and the building industry, long-term thermal resistance (LTTR), described in greater detail below, refers to the impact of diffusion on the thermal resistance of insulation materials. In other words, the concentration of gaseous blowing agents contained in the foam, and which provide the foam with much of its insulating value, is reduced by both the diffusion of air into the foam and the secondary process of the blowing agent diffusing out of the foam. Because air has a significantly lower insulating value, the increased ratio of air to blowing agent reduces the foam insulation performance (this process is also known as ''aging''). This diffusion process causes foam to lose insulating value, which is represented by its R-value. As a concept, LTTR represents the R-value of foam material over its lifetime by describing insulating performance changes due to diffusion over time.

DOE investigated the issue of aging in foam insulation and found that it is widely accepted that the material properties of foam insulation made with gaseous blowing agents, other than air and including HFC–134a, HFC–245fa, HFC–365mfc, cyclopentanes, change over time. The amount of degradation can range from roughly 10–35 percent within 2 years of manufacture. Because use of ASTM C518–04 reflects the properties of a material at the time it is tested, using ASTM C518–04 to measure the insulating performance of a foam material at the time of manufacture would yield a result that differs from that produced by the same test conducted at some later point in time. Additionally, research has found that the vast majority of diffusion into and out of foam materials manufactured with blowing agents other than air occurs within the first 5 years of manufacture. Because the rate of diffusion follows an exponential curve, the majority occurs within the first year, after which the diffusion curve changes very little as it asymptotically approaches the equilibrium point.

DOE found that various methods of ''conditioning'' foam prior to measuring its insulating ability with American Society for Testing and Materials (ASTM) C518 have been developed in order to test aged insulating value, or LTTR. These standards are contained in five foam material specifications:

(1) ASTM C578–09, ''Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation;''

(2) ASTM C591–08a, ''Standard Specification for Unfaced Preformed Rigid Cellular Polyisocyanurate Thermal Insulation;''

(3) ASTM C1029–08, ''Standard Specification for Spray-Applied Rigid Cellular Polyurethane Thermal Insulation;''

(4) ASTM C1126–04, ''Standard Specification for Faced or Unfaced Rigid Cellular Phenolic Thermal Insulation;'' and

(5) ASTM C1289–08, ''Standard Specification for Faced Rigid Cellular Polyisocyanurate Thermal Insulation Board.''

DOE found that since their development in the 1980s, the most widely accepted conditioning methods are the 180-day conditioning at 73 °F or a 90-day conditioning at 140 °F. The goal of the 90-day conditioning method was to achieve the same aging result as the 180-day method in a shorter period of time. 180-day conditioning is used by ASTM C591–08a and ASTM C578–09 and the 90-day condition is typically used for ASTM C1089–08 and ASTM C1126–04. By accelerating the conditioning, the 90-day test sought to reduce the time and cost burdens for manufacturers. Although elevating the temperature of foams did achieve a faster rate of aging, subsequent research found that the results were not reliable indicators of actual aging because the relationship between the diffusion coefficient (a proportionality constant that describes the force or rate of diffusion for a given substance) and temperature are different for each gas. (Therese Stovall, ''Measuring the Impact of Experimental Parameters upon the Estimated Thermal Conductivity of Closed-Cell Foam Insulation Subjected to an Accelerated Aging Protocol: Two-Year Results,'' p. 1)

DOE found that efforts to develop an accelerated aging method that did not use elevated temperatures resulted in the creation of ASTM C1303, which in 1995 introduced the slicing and scaling method, also known as the ''thin slicing'' method (a technique used to slice the foam so that it ages more rapidly as a function of reduced thickness). In contrast to ASTM C578–09, ASTM C591–08a, ASTM C1029–08, ASTM C1126–04, and ASTM C1289–08, which specify the use of either the 180-day conditioning method or 90-day accelerate conditioning method to age the foam before measuring its thermal resistance. In contrast, the thin slicing method used in ASTM C1303–08 (the most recent version of ASTM C1303) was designed specifically to test the aging of foam insulation in duration shorter than 180 days, and without the temperature elevation methodology used in the 90-day test. (ASTM C1303–08, section 5.3, at p. 3) By reducing the length of the pathway for diffusion to take place, the ''aging'' can be accelerated without the confounding effects caused by unique gas properties of the material and blowing agent. The results are used to determine the R-value of foam 5 years after manufacture, a value that has been shown to correlate strongly with the average R-value of foam 15 years after manufacture. (ASTM C1303–08, section 5.4, at p. 3)

In early 2000, the National Research Council Canada and Institute for Research in Construction (NRC–IRC) developed CAN/ULC–S770–00. CAN/ULC–S770–00 incorporated elements of ASTM C1303–95 (the first version of ASTM C1303) but altered that standard by clarifying the slicing procedure used in ASTM C1303–95, as differing interpretations of the previous procedure were thought to be causing variations in the test results among third-party testing facilities. These changes sought to eliminate inconsistency in the interpretation of the slicing procedure and test setup to ensure uniformity across testing labs. In December 2000, CAN/ULC–S770–00 became the Canadian national mandatory test for calculating the LTTR of all foam insulation products (this test has since been updated; the most recent version is CAN/ULC–S770–03). Members of the U.S.-based Polyisocyanurate Insulation Manufacturers Association (PIMA) began to test their products using the same procedure on January 1, 2003. The LTTR calculated from this test procedure is used for all building insulation product labeling in Canada and PIMA products in the United States. Also in 2000, ASTM C1303–95 was updated as ASTM C1303–00.

In a 2005 rule by the U.S. Federal Trade Commission (FTC) in which the FTC considered requiring ASTM C1303–00 (the most recent version at that time) for product labeling on all foam insulation products, the FTC's review process revealed several unresolved issues related to the test procedure. (70 FR 31258 (May 31, 2005); 16 CFR Part 460, Labeling and Advertising of Home Insulation: Trade Regulation Rule, Final Rule) Subsequently, ASTM C1303–00 was updated to address these issues, which included foam stack composition, minimum slice thickness and slice source, the time between manufacture and test initiation, preparation of foam-in-place samples, and other clarifications of the procedure. This updated version was published as ASTM C1303–08 and is the most recent version of the standard to date.

Some commenters noted during the framework meeting that the application of an impermeable vapor barrier to the surface of the foam could reduce the impact of aging. Depending on its end use, foam insulation may have facers or skins applied to act as a vapor barrier and/or to enhance the bond of construction glues. Kysor stated that proper use of skins eliminates aging and the associated reduction of R-value in polyurethane panels. (Kysor (attachment), No. 29 at p. 1)

DOE examined this issue and found that foams used in walk-in panels are sometimes protected by impermeable barriers designed to prevent vapor and/or air exchange into or out of the foam or the interior of the walk-in. DOE found research conducted by the National Resource Council Canada (NRCC) suggesting that impermeable facers do not eliminate aging but may delay the rate of aging and/or the final equilibrium of the aged state. (Mukhopadhyaya, P.; Bomberg, M.T.; Kumaran, M.K.; Drouin, M.; Lackey, J.; van Reenen, D.; Normandin, N., ''Long-Term Thermal Resistance of Polyisocyanurate Foam Insulation With Impermeable Facers''; Mukhopadhyaya, P.; Bomberg, M.T.; Kumaran, M.K.; Drouin, M.; Lackey, J.; van Reenen, D.; Normandin, N., ''Long-Term Thermal Resistance of Polyisocyanurate Foam Insulation With Gas Barrier''; Mukhopadhyaya, P.; Kumaran, M.K. ''Long-Term Thermal Resistance Of Closed-Cell Foam Insulation: Research Update From Canada.'') In one of the summary observations of ''Long-Term Thermal Resistance of Polyisocyanurate Foam Insulation With Gas Barrier,'' the NRCC noted, ''a considerable amount of aging occurred in thin slice specimens despite having untouched impermeable facers, as well as a glass plate at the bottom of the specimens and edges sealed completely with epoxy coating.''

Additionally, the relationship between the skin and the rate of aging in foam depends on preserving the integrity of both the skin surface and the bonding between the skin and insulation. Punctures, made to allow for the installation of light fixtures, doors, and shelving, undermine the integrity of the skin. Walk-in insulation panels and their skins also typically separate over time due to shrinkage of foam materials after manufacture. While most foam materials contract by less than 1 percent of their total volume, shrinkage at this level is enough to create significant air gaps. DOE found that current methods of conditioning foam materials do not account for impermeable facers.

Finally, like the conditioning standards that are currently in use, ASTM C1303–08 is not designed to test impermeably faced foams that may be

used with walk-ins. Significant research has been underway by the NRCC but no known test procedure is currently available that accounts for the effect of impermeable barriers. DOE requests feedback on this issue, including the submission of test results on the impact of impermeable skins on long-term R-value. DOE specifically requests that interested parties submit or identify peer-reviewed, published data on this issue.

DOE also requests feedback on the use of ASTM C1303–08 with impermeably faced foams. DOE may recommend the use of a test procedure specifically designed for impermeably faced foam if one is developed.

As a result of this evaluation, DOE proposes requiring manufacturers to use ASTM C1303–08 to determine the LTTR of walk-in foam insulation for the purposes of calculating the energy consumption of walk-in equipment. DOE requests comments on this proposal.

DOE is also proposing and seeking comment on the following exceptions to ASTM C1303–08:

(1) Section 6.6.2 of C1303–08 suggests that two standards for measuring the thermal resistance may be used. DOE proposes to allow use only of ASTM C518–04 (in EPCA, an incorrect form of the date suffix was used, *e.g.,* ASTM C518–[20]04), as specified in EPCA. (42 U.S.C. 6314(a)(9)(A)(ii))

(2) In section 6.6.2.1, in reference to ASTM C518–04, the mean test temperature of the foam during R-value measurement would be −6.7 ± 2 °C (20 ± 4 °F) with a temperature difference of 22 ± 2 °C (40 ± 4 °F) for freezers and 12.8 ± 2 °C (55 ± 4 °F) with a temperature difference of 22 ± 2 °C (40 ± 4 °F) for coolers. This change replaces the standard mean temperature of 75 °F for ASTM C518–04 with the EPCA specified values.

(3) For the purposes of preparing samples with foam-in-place method, section A2 should be followed exactly except for the following modifications to accommodate foam-in-place methods that may be used during the manufacture of walk-in panels:

- (3.1) Instead of following A2.3, which specifies that the foam be sprayed onto a single sheet of wood, the sample shall be foamed into a fully closed box of internal dimension 60 cm x 60 cm by desired product thickness (2ft x 2ft x Desired thickness). The box shall be made of ¾ inch plywood and internal surfaces wrapped in 4 to 6 mil polyethylene film to prevent the foam from adhering to the box material.
- (3.2) Instead of following section A2.4, which specifies the spraying of foam layers onto a open sheet of plywood, the cavity shall be filled using the manufacturer's typical foam-in-place method through a standard injection port or other process typically used to foam the product being tested.
- (3.3) In section A2.6, which defines the single surface in contact with the board to be the ''surface,'' the definition of the foam's ''surface'' shall be the two surface regions in contact with the 60 x 60 cm sections of the box.
- (3.4) Section A2.8 shall not be followed because the prepared sample will not have any ''free rise'' component.

DOE proposes that manufacturers select foam test thicknesses based on design specifications and practice. If a foam's thickness as manufactured varies from the tested product thickness, DOE proposes that the R-value of that foam at its manufactured thickness may be interpolated using the results of ASTM C1303–08, provided that the manufactured thickness does not vary from the tested product thickness by more than ± 0.5 inches. For example, if 4-inch and 6-inch products were prepared, interpolation between 3.5 and 4.5 inches would be allowed for the 4-inch foam and 5.5 and 6.5 inches for the 6-inch foam. If the manufacturer determines that final foam thickness should be outside of the tested range, then additional testing would be necessary to fit the criterion for interpolation. Manufacturers should make their sample selections accordingly to avoid the need for additional testing. DOE requests feedback on the use of interpolation within the specified ± 0.5 inch range.

DOE proposes that the results for each of the sample sets of three stacks should be reported as specified by ASTM C1303–08. As defined by ASTM C1303–08, after thin slices of foam are cut, the slices are organized into ''stacks'' of slices to match the original overall thickness of the sample. The procedure defines three stack types: (1) Stacks comprised of only surface slices of foam, (2) stacks of only core slices and (3) a mixture of core and surface slices. A ''surface'' slice and a ''core'' slice are defined in ASTM C1303 as ''a thin-slice foam specimen that was originally adjacent to the surface of the full-thickness product and that includes any facing that was adhered to the surface of the original full-thickness product'' and ''a thin-slice foam specimen that was taken at least 5 mm (0.2 in.) or 25% of the product thickness, whichever is greater, away from the surface of the full thickness product,'' respectively. The R-value of only the mixed stack would be used to calculate the energy performance of walk-ins. DOE requests feedback on this approach. ASTM is currently conducting a 5-year ''ruggedness'' test. Upon completion of the test, DOE may consider a rulemaking to modify the required number of stacks and/or which stack is best suited for labeling and calculating energy performance. DOE requests feedback on the use of the mixed stack R-value for the purpose of calculating walk-in energy use.

Additionally, DOE notes that ASTM C1303–08 is specifically intended for measuring the LTTR of foam materials. In light of this situation, the process contained in this standard would not apply to advanced insulation technologies such as vacuum insulated panels (VIPs) or aerogels. However, ASTM C518–04 can be used to measure the thermal properties of these new technologies, which, as specified in EPCA, is the required test for measuring insulating performance. (42 U.S.C. 6314(a)(9)(A)(ii)) DOE requests feedback on whether non-foam advanced technologies, such as VIPs or aerogels, would be likely to be used for walk-ins in the next 5 years. If DOE determines that these materials may be used in walk-ins in the next 5 years, DOE may consider alternative test procedures for capturing the long-term insulating value of any non-foam materials.

ii. Water Absorption in Foam

At the framework public meeting, interested parties raised the issue of R-value deterioration in foams due to moisture absorption. Craig stated that moisture penetration causes a decline in the R-value of foam insulation, at a rate that depends on the type of foam used. (Craig, No. 22 at p. 3) As is the case with aging, insulating foams exhibit different characteristics in the presence of moisture. Polystyrene foam is highly resistant to water absorption, whereas polyurethanes and polyisocyanurates are more easily damaged by exposure to moisture. In general, the solution to moisture issues involves creating an impermeable barrier between the insulation and the moisture source. However, Owens Corning asserted that customers routinely puncture metal skins to allow for the installation of lighting fixtures, shelving, and doors, creating holes that allow moisture to enter the insulation. (Owens Corning, Public Meeting Transcript, No. 15 at p. 61)

Although vapor permeance and water absorption tests exist, they are designed for measuring specific material properties rather than measuring system performance of composite structures like walk-ins. For a variety of reasons,

these tests would be complex, costly, and time consuming to use because several sub-methods would need to be developed to quantify the impact of water on walk-ins. For every unique construction method and/or combination of materials (*e.g.,* blowing agent, foam type, barriers, gasketing materials, panel joint type, and method), the following considerations exemplify the challenges inherent in accounting for and quantifying insulating performance: (1) The rate at which the walk-in envelope collects water over its life must be measured or predicted using an accelerated test; (2) a saturation level or maximum absorption, if any, must be determined; and (3) a correlation between water absorption levels and insulation performance must be quantified. At this time, test procedures for each of these considerations are not yet recognized by a nationally recognized organization such as ASTM.

DOE reviewed several methods for testing vapor permeance and water absorption in foam insulation materials including ASTM E96, ''Standard Test Methods for Water Vapor Transmission of Materials,'' ASTM C209, ''Standard Test Methods for Cellulosic Fiber Insulation Board,'' ASTM C272–01 (2007), ''Standard Test Method for Water Absorption of Core Materials for Structural Sandwich Constructions,'' and ASTM D2842–06, ''Standard Test Method for Water Absorption of Rigid Cellular Plastics.'' Each of these standards describes a method for submerging a sample in water for a specified amount of time and then measuring the amount of water absorbed on a volume or weight basis. However, each one specifies significantly different immersion durations (ranging from 2 to 96 hours) and methods of weighing samples (blotting surfaces before measurement or using a buoyancy measurement). DOE believes that using the longest test period, 96 hours, would likely result in near worst case or maximum water absorption, but it is unclear how this directly translates to reduction in insulation performance for various materials.

Additionally, ASTM E96–05 measures vapor permeance under low vapor pressure gradient conditions. However, the temperature differentials in which walk-ins operate cause a high vapor pressure gradient, which has the effect of continuously driving moisture through the envelope. Neither ASTM E96–05 nor any other known procedures currently provide a methodology to accurately calculate the vapor permeance in walk-ins at the pressure gradients typically experienced in the field.

Some research has been completed, including a major study by the Cold Regions Research and Engineering Lab (CRREL). The CRREL study developed and applied a method for creating a vapor pressure gradient across various materials to quantify the rate at which these materials absorb and retain water over time. The insulating performance of the materials was also tested at various levels of moisture content to develop equations for the purpose of calculating the insulating properties at any moisture percentage relative to its dry weight. No other testing body has applied CRREL's testing procedures to replicate the results and most of CRREL's research was completed nearly 20 years ago. One of DOE's national labs has also begun development of procedures to evaluate the impact of moisture on insulation R-values, but this activity remains incomplete.

Given the discussion above, DOE does not propose to include the impact of water absorption on R-value in the test procedure because no well-accepted method has been developed. However, DOE will evaluate such a procedure if it is developed in the future.

b. Air Infiltration

Another major pathway for energy loss in walk-ins is air infiltration, or air exchanged into and out of a walk-in while all access points are closed or during door-opening cycles (*i.e.,* the openings of doors for the removal or stocking of product, or passage of customers, personnel, and/or machinery, also referred to as ''door-opening events''). Compared with other energy consumption factors such as conduction losses through insulation, air infiltration may be the largest contributing factor to envelope energy losses. Air infiltration can occur through steady-state leakage or from door opening events. As a result, designs and technologies that reduce infiltration during steady-state operation and door-opening events should be considered to reduce these losses.

EPCA includes prescriptive requirements for doors used on walk-ins, recognizing that a major portion of energy is lost through door opening cycles. All walk-in coolers or freezers ''manufactured on or after January 1, 2009, shall (A) have automatic door closers that firmly close all walk-in doors that have been closed to within 1 inch of full closure, except * * * doors wider than 3 feet 9 inches or taller than 7 feet; [and] (B) have strip doors, spring hinged doors, or other method of minimizing infiltration when doors are open * * *'' (42 U.S.C. 6313(f)(1)) During the framework public meeting, interested parties suggested methods for calculating infiltration from door-opening events within the test procedure.

These two infiltration pathways, steady-state leakage, and air losses due to door-opening events, are mitigated using distinct methods.

Steady-state infiltration (the air exchanged between the interior and exterior of a walk-in while all doors are closed, also referred to as ''leakage'') occurs because of the significant pressure gradient caused by the large temperature difference between the refrigerated space and the external environment. This pressure differential continuously induces air movement from the outside to the inside of a walk-in where leakage pathways exist. Leakage typically occurs through door frames, door gaskets, wall panel-to-panel interfaces, and wall-to-floor and wall-to-ceiling junctions. While considered minimal for small walk-ins, leakage becomes more significant as the walk-in size increases.

Air infiltration due to door openings is mostly a function of door area, opening frequency, duration, and air density. The primary means of reducing the amount of infiltration is by the use of active or passive infiltration reduction devices and devices that help reduce the time that doors are left accidentally ajar. Air curtains and strip curtains are good examples of active versus passive devices. The sections below describe the methods for testing the effectiveness of such devices and procedure for calculating air infiltration's impact on energy use in walk-ins.

Hired Hand recommended that the energy analysis for warehouse coolers and freezers include the performance of the door, including the number of door-opening cycles each day or week and factoring in optional door configurations such as automatic doors with or without strip curtains. (Hired Hand, No. 27 at p. 1) Eliason recommended that DOE consider average door cycling and door-ajar conditions in its test procedure. (Eliason, No. 19 at p. 1) Eliason noted that both of these conditions are part of the company's internal life-cycling test and represent real-world conditions. (Eliason, No. 19 at p. 1) Hired Hand stated that a simple rating for door infiltration performance could be based on door-opening cycles per week. (Hired Hand, No. 27 at p. 2) Hired Hand also suggested that DOE require consumer labeling to indicate the cost per minute of leaving the door open based on door

size and application. (Hired Hand, No. 27 at p. 2)

Based on stakeholder comments and DOE review of the impact of air infiltration on energy use, DOE identified two methods that could be used to measure air infiltration in walk-ins: the blower door method and the gas tracer method. These methods are described in the following subsections.

i. Blower Door Method

DOE reviewed ASTM E1827–96 (2007), ''Standard Test Methods for Determining Airtightness of Buildings Using an Orifice Blower Door,'' as a possible candidate test procedure for testing walk-ins. This method pressurizes or depressurizes the internal space using a large fan, typically placed in a doorway. The infiltration rate of the space can be directly calculated by measuring the pressure difference between the exterior and interior space and the air-flow rate through the fan.

After reviewing this test method, DOE identified reasons why the test might not be suitable for walk-ins. The blower door method is better suited for structures with relatively high rates of infiltration, such as buildings and homes, rather than the relatively low levels typically observed in walk-ins. In addition, known calibration curves for the blower door method require small temperature differentials (generally less than 10 °F) between the inside and outside of the envelope. However, walk-ins typically operate with a far greater differential that is normally greater than 40 °F. Another drawback to using this method with walk-ins is that the test setup procedure requires blocking a main entrance to the structure with the blower door. Because infiltration around the main door is a key source of infiltration in walk-ins and would not be measured as part of the test, this approach would not adequately capture the majority of the infiltration. For these reasons, DOE does not propose the use of the blower door method for measuring the air infiltration of walk-ins.

ii. Gas Tracer Method

DOE also reviewed ASTM E741–06, ''Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution.'' Although not as widely used as the blower door method, the gas tracer method has been used for decades by the building industry. The test is conducted by injecting a tracer gas, such as carbon dioxide or perfluorocarbons, into the internal space and measuring its concentration at recorded times. From these measurements, the average air change rate can be determined. While manual tools, such as syringes, or automated systems can be used to sample the air spaces, the test procedure lends itself to automation both for calibration and data collection. Depending on the gas and sampling method used, the gas concentration can be measured immediately with portable equipment. This method is also more accurate than the blower door method because it allows for direct measurement of infiltration without modification of the design conditions. (ASTM, ASTM E741–06 (2006), ''Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution,'' section 5.6, p. 3)

c. Steady-State Infiltration Test

For the reasons described above, DOE proposes using the gas tracer method described in ASTM–E741–06 for measuring the steady-state air infiltration of walk-ins, with the following six exceptions:

First, DOE proposes using the ''concentration decay method'' instead of other available options described in ASTM E741–06. DOE considers this method to be the simplest, fastest, most cost efficient, and most accurate.

Second, carbon dioxide (CO_2) is the recommended gas tracer for all testing because of the few human hazards related to its use, and the availability and relative cost of sampling equipment.

Third, the test would use the ''average air change rate'' method, in changes per hour (1/h), rather than the ''average air change flow'' method described in ASTM E741–06. The ''air change flow'' method allows for the direct measure of the exchange of air in cubic feet per hour and does not require measurement of the internal volume of the space but requires a more complex test setup and sampling method. In contrast, the ''air change rate'' method measures the rate of exchange of air per unit of time can be completed using relatively simple equipment. However, converting this value to a measurement of the flow, *e.g.,* volume of air exchanged per unit time, requires a precise measurement of internal volume. Since the precise internal volume of a given walk-in is readily available, DOE considers the ''air change rate'' method preferable to the ''air change flow'' method because the equipment is less expensive and the measurements are easier to obtain.

Fourth, ASTM E741–06 describes the importance of verifying proper gas mixing but does not describe where or how many spatial locations should be sampled. DOE proposes that spatial measurements shall be taken in a minimum of six locations or one location per 20 square feet (ft^2) of floor area (whichever results in a greater number of measurements), at a height of 3 ft ± 0.5 ft, or a minimum of 2 ft ± 0.5 ft from the inside wall of the walk-in envelope, to verify that the air space is uniformly mixed.

Fifth, DOE proposes the test be completed close to operational temperature to mimic the thermally induced pressure gradient seen in walk-ins. The internal air temperature shall be −23.3 (−10 °F) ± 2 °C (4 °F) for freezers and 1.7 (35 °F) ± 2 °C (4 °F) for coolers. The external air temperature should be 24 °C (75 °F) ± 2.5 °C (5 °F).

Sixth, the test should be completed with all doors closed. The resulting measurement shall be in units of changes per hour.

DOE requests feedback on its proposal to use ASTM E741–06 as the method for determining air infiltration and on the proposed exceptions to the test procedure.

For the purposes of administering the test, DOE considered the following options for the location of the test: (1) Require testing at a third-party testing facility. DOE believes that requiring that manufacturers to ship every walk-in manufactured, or a representative model, to a third-party facility for testing, would place a substantial burden on manufacturers; (2) require testing by a third party on site at a walk-in manufacturing facility. Completing the infiltration test at the manufacturing facility reduces logistical complexity and costs associated with testing. Since the equipment used to complete infiltration testing was originally designed for testing the performance of buildings, the equipment and protocols are designed to be mobile.

DOE believes that the most viable option is allowing testing to occur at the manufacturing facility, if preferred by the manufacturer. DOE requests feedback on the flexibility of location required for completion of any infiltration test.

iii. Door Infiltration Reduction Device Test

DOE is considering incorporating a door-opening test to quantify the impact of technologies such as strip curtains, air curtains, or other infiltration reduction devices during door-opening events. Due to the limited data available on these devices and the variety of technologies, DOE believes a standardized test would provide a more comprehensive and accurate picture regarding the effectiveness of these devices when compared to simply using effectiveness assumptions.

DOE proposes a two-part test to account for the effect of the door infiltration reduction device. First, measurements should be taken once the tracer gas has uniformly dispersed in the internal space using the methodology described in ASTM E741–06. Within 3 minutes ± 30 seconds, with the infiltration reduction device in place, a door should be opened at an angle of 90 degrees over a period no longer than 3 seconds, then held at 90 degrees in the open position for 5 minutes ± 5 seconds, then closed over a period no longer than 3 seconds. The gas concentration should be sampled again after the door has been closed. Samples should continue being taken until the gas concentration is once again uniformly mixed within the walk-in. Second, the test should be repeated exactly as described above with the infiltration reduction device removed or deactivated.

Using the measured infiltration with the device in place and without the device in place, the infiltration reduction effectiveness can be directly calculated:

$$E = \frac{V_{rate,with\text{-}device}}{V_{rate,without\text{-}device}} \times 100\% \qquad \text{Eq. 1}$$

Where:

$V_{rate,with\text{-}device}$ = air infiltration rate, with door open and reduction device active, using 4.2, 1/h;

$V_{rate,without\text{-}device}$ = air infiltration rate, with door open and reduction device disabled or removed, using 4.2, 1/h.

This calculation will yield a value between 0 and 100 percent, with 100 percent meaning that the device prevents all air infiltration when the door is open. DOE proposes using this calculated effectiveness for every unique door-device combination that a manufacturer may offer. DOE requests feedback on the proposed method for measuring the effectiveness of an infiltration reduction device.

iv. Infiltration Due to Door Openings

DOE does not propose to require manufacturers to measure the infiltration from all door-opening events. The complexity of testing, the variation of walk-in design, and various end-use behavior factors would make such a recommendation very difficult to execute. Instead, DOE proposes using analytical methods based on equations published in the ASHRAE Refrigeration Handbook in combination with assumed door-opening frequency, and duration of door cycles, to calculate the air infiltration associated with each door-opening event.

ASHRAE recommends using Gosney and Olama's (1975) air exchange equations for fully established flow through door openings (Equation 2). Several key assumptions have the greatest impact on predicated air exchange and are related to the calculation of the decimal portion or time a doorway is open, D_t. (ASHRAE, *Refrigeration Handbook*, 2006, section 13.5)

$$D_t = \frac{\left\lfloor \left(P \times \theta_p\right) + \left(60 \times \theta_o\right) \right\rfloor}{\left[3600 \times \theta_d\right]} \qquad \text{Eq. 2}$$

Where:

D_t = fractional door opening,

P = the number of doorway passages (or number of door-opening cycles for a given door),

θ_p = the door open-close time,

θ_o = the time the door stands open, and

θ_d = daily time period.

D_t is important for properly calculating the energy impact of air infiltration due to door-opening events. Therefore, the assumed values of P, θ_p, and θ_o will drive the result. The daily time period, θ_d, is simply assumed to be 24 hours.

For display glass doors, a P of 72 per day, θ_p of 8 seconds per passage, θ_o of 0 minutes and θ_d of 24 hours could be used. P of 72 per day is based on comments by Hired Hand and research on cold store infiltration. Hired Hand commented that the reach in frequency is approximately 400–600 per week (or one passage every 20 minutes assuming 18 hours per day per week). (Hired Hand, Public Meeting Transcript, No. 15 at p. 154) However, DOE identified a study by A.R. East, P.B. Jeffrey, and D.J. Cleland, ''Air Infiltration into Walk-in Cold Rooms,'' which suggested that this number should be closer to one passage every 10 minutes (assuming 18 hours per day per week). DOE suggests that the average of the two values of one passage every 15 minutes or P of 72 per day could be used. DOE chose the value of 8 seconds per passage but seeks comment on whether another value may be more appropriate.

For all other door or access types, a P of 60 per day, θ_p of 12 seconds per passage, θ_o of 15 minutes, and θ_d of 24 hours could be used. The number of passages reflects that other door types are typically accessed less frequently than glass doors. The value of 12 seconds per passage was selected based on the assumption that non-glass doors, such as those through which forklifts are driven in order to load product, will be open for longer periods of time than a typical display door. DOE selected the θ_o of 15 minutes due to the probability that a non-glass door will be propped open accidentally or intentionally. If an automatic door opener/closer is used for doors larger than 7 feet tall and 3 feet, 9 inches wide, then a θ_p of 10 seconds should be used.

DOE recognizes that with the variety of walk-in types and end-users, the frequency and duration of door-opening events is likely to vary significantly. As a result, DOE requests comments on the DOE assumed values for P, θ_p, and θ_o.

3. Calculations

In this section, DOE proposes a calculation methodology for using the results obtained from the measurements in the aforementioned tests, along with other known quantities, to calculate an energy use metric associated with the envelope. The steps in the proposed methodology are explained below.

a. Energy Efficiency Ratio

EPCA requires that the test procedure ''measure the energy use of walk-in coolers and walk-in freezers.'' (42 U.S.C. 6314(a)(9)(B)(i)) However, EPCA does not specify the units of measurement or units for reporting that are required. Based on a review of commonly used energy consumption metrics, DOE recommends the use of kWh/day as this unit is commonly recognized by end-users, manufacturers and other interested parties. However, a majority of metrics used to describe heat transfer losses are in units of British Thermal Units (BTU) per unit time. Therefore, to convert the British Thermal Units per hour (BTU/h) thermal energy transmission calculation into a measure of electrical energy consumed by the refrigeration equipment to remove the heat, DOE proposes using an energy efficiency ratio (EER) conversion based on a nominal efficiency of an assumed refrigeration system.

Because an envelope manufacturer cannot control where the refrigeration equipment is sited and the EER is intended to provide a means of comparison and not directly reflect a real walk-in installation, DOE proposes that the EER be 12.4 Btu per Watt hour (Btu/W-h) for coolers and 6.3 Btu/W-h for freezers. The difference in EER for coolers and freezers reflects the relative efficiency of the refrigeration equipment for the associated application. As the temperature of the air surrounding the evaporator coil drops (that is, when considering a freezer relative to a cooler), thermodynamics dictates that the system effectiveness at removing heat per unit of electrical input energy decreases. DOE requests feedback on the relative EERs of refrigeration equipment for a comparison basis.

b. Heat Gain Through the Envelope Due to Conduction

The energy calculation for all components that comprise the external surface area of the walk-in may be determined using the measured surface area, the measured foam R-value for the walls and ceiling, the R-value (or U-value) for glass doors, the design operation temperature, and the average ambient air temperature. Then, the associated heat transfer due to conduction can then be directly calculated.

i. Conduction Through Glass Display Doors

The heat conduction through the glass is one of the largest single contributors to energy consumption for walk-ins with a high ratio of glass surface area to non-glass surface. The thermal conductivity, the inverse of thermal resistivity or R-value, is commonly represented by the U-value in units of Btu/ft^2-°F-h. The thermal conductivity for most glass products, such as glass doors and windows used in buildings, is certified by a third party organization such as the National Fenestration Rating Council (NFRC). After certification, the product is granted a NFRC label and thermal conductivity performance rating. This rating represents an overall component performance including but not limited to the glass and the glass frame. However, in the case of glass products manufactured for the use in walk-ins, such as display doors, inset window and glass walls, DOE believes that glass component manufacturers currently do not participate in any third party rating programs nor do they provide products with performance labels. In addition, the performance data of these products is not readily available able in product literature.

In order for the thermal conductivity performance of glass products be incorporated into the walk-in test procedure, DOE proposes these two options: (1) If manufacturers of glass doors used in walk-ins participate in the same NFRC rating program, the performance of the door shall be simply read from its label and used for calculations in this test procedure. If glass door manufacturers do not participate in the same NFRC rating program, then (2) DOE would require manufacturers to use the free software package Window 5.2 (available here: *http://windows.lbl.gov/software/window/window.html*), that calculates the U-value, or thermal conductivity, of a glass door given precise specifications such as the size of the door, the number of panes of glass, the gas fill between the panes, etc. This tool was developed by Lawrence Berkeley National Lab (LBNL) and is known in the glass component industry to accurately predict glass door thermal performance from the given door characteristics. It has been used for many years and has been heavily verified by empirical test data. In order to ensure that inputs used to calculate overall door performance are not being manipulated by manufacturers, DOE intends to require the walk-in manufacturer to report the exact inputs and settings used in Window 5.2 to represent the door materials and glazing system. This will ensure transparency and accuracy by enabling other manufacturers and DOE to verify the integrity of the data and calculated performance.

DOE seeks comment on the availability of performance data on glass products used in walk-in applications, glass component manufacturers' participation in third party certification programs such as NFRC, and the proposed method for predicting the thermal performance of glass components using LBNL's Window 5.2 software package.

ii. Conduction Through Floors

In general, walk-in coolers are installed on top of concrete surfaces regardless of the walk-in type. For a walk-in cooler that does not have a floor supplied by the manufacturer, the average insulating performance of concrete will be assumed for the floor surface of the walk-in. Therefore, DOE proposes using an R-value of 0.6 ft^2-F-h/Btu for calculating the energy lost assuming the walk-in cooler are sited on 6-inch concrete floors of 150 lb/ft^3 density (ASHRAE Fundamentals Handbook). DOE requests feedback on the use of this R-value for coolers that are not shipped with an insulated floor.

Generally, walk-in manufacturers that sell large freezers do not install freezer floors. This task is normally subcontracted by the end-user before the walk-in is installed to ensure EPCA compliance. Therefore, DOE proposes using the minimum R-value specified in EPCA for walk-in freezer floors, R–28 ft^2-F-h/Btu, for energy performance calculations if the manufacture does not supply a floor to ensure EPCA compliance. (42 U.S.C. 6313(f)(1)(D)) DOE requests comments on the use of this proposed R-value for freezer floors.

c. Heat Gain Due to Infiltration

The amount of embodied energy in an air sample is primarily a function of its temperature and density or what is typically referred to as the enthalpy in a thermodynamic system such as a walk-in. The required amount of energy needed to remove heat from the air is calculated as the difference between the enthalpy of air entering the refrigerated space and enthalpy of the air inside the refrigerated space. This calculation is commonly used when designing walk-ins and typically uses dry-bulb and wet-bulb temperatures. The difference, per unit mass or volume of air, is calculated using the functional relationship between temperature and enthalpy. Using the measured infiltration rate from the required steady-state test described above or calculated analytical value for air infiltration for door-opening events and the calculated internal and external enthalpy, a rate of energy lost per hour (Btu/h) due to air exchange can be calculated.

d. Envelope Component Electrical Loads

Because the energy use of the walk-in refrigeration equipment is being analyzed separately from the envelope energy use, DOE is considering calculating the electricity consumption of lights, sensors, and other miscellaneous electrical devices using name-plate rating and assumptions about their daily operation, all of which would be incorporated into the evaluation of envelope energy use. In addition, because the test procedure for the refrigeration system will not include heating loads caused by lighting, heater wires, and other miscellaneous components, the thermal load from these components will be factored into the envelope calculations. DOE proposes as part of the test procedure calculations that 100 percent of the electrical energy consumed to operate the devices that are internal located in the walk-in, will be converted to thermal energy. This assumption is accurate since at steady-state, all the input electrical energy is converted completely into heat adhering to the physical laws of conservation of energy. While some electrical energy, which has been converted into light, may escape the controlled space via translucent glass display doors, this escaping energy is negligible. The associated thermal energy will then be used to calculate an additional compressor load that would be required to remove the additional heat generated by these components.

DOE recommends using the following equation to calculate the power usage for each electricity-consuming device type, P_{comp}, (kWh):

$$P_{comp,t} = P_{rated,t} \times (1 - PTO_t) \times n_t \times 24 \qquad \text{Eq. 3}$$

Where:

$P_{rated,t}$ = rated power of each component,
PTO_t = percent time off, and
n_t = the number of devices at the rated power.

DOE proposes that the rated power must be read from each electricity-consuming device product data sheet or name plate, and the n_t is the number of identical devices for which the P_{comp} calculation is being made.

DOE further proposes the use of the following equation to calculate additional compressor load due to heat generated by electrical components, C_{load}, (kWh):

$$C_{load} = P_{tot,\text{int}} \times \frac{3.412}{\text{EER}} \frac{\text{Btu}}{\text{Wh}} \qquad \text{Eq. 4}$$

Where:

EER = EER of walk-in (cooler = 12.4 or freezer = 6.3), Btu/W-h
$P_{tot,int}$ = The total electrical load due to components sited inside the walk-in envelope

The percent time off (PTO) value accounts for the reduction in energy use in walk-ins with component control systems installed and to specify the possible number of hours for various component types. While this value may not reflect behaviorally related energy consumption, such as how long an end-user typically leaves the lights on, it will provide a means for comparison of walk-in performance. To address the wide variety of devices that could be employed in a walk-in unit, DOE proposes the following PTO values:

(1) For lights, DOE proposes a PTO value of 25 percent for systems without timers or other auto shut-off systems and 50 percent for systems with timers or other auto shut-off systems installed.

(2) For anti-sweat heaters, DOE proposes a PTO value of 0 percent for all systems without direct or indirect relative humidity sensing controls. DOE further proposes that a PTO value of 75 percent be used for walk-in coolers, and 50 percent for walk-in freezers with these controls. (Focus on Energy, BP–3429–0304, ''Anti-Sweat Heater Controls,'' 2004, p. 1)

(3) For electrically powered devices (such as air curtains) that mitigate air infiltration but are not actively controlled based on door open or closed positions, DOE proposes a PTO value of 25 percent.

(4) For electrically powered devices that mitigate air infiltration that are also actively controlled based on door open or closed position for *display doors*, DOE proposes a PTO value of 99.33 percent.

(5) For electrically powered devices that mitigate air infiltration that are also actively controlled based on door open or closed position for *all other doors*, DOE proposes a PTO value of 99.17 percent.

(6) For all other devices, DOE proposes a PTO value of 0 percent, unless the walk-in manufacturer can demonstrate that the device is controllable by a preset control system. If this can be demonstrated, then DOE proposes a value of 25 percent for the device in question.

DOE seeks comments on these assumptions.

e. Normalization

A single metric would make comparing the energy use of walk-ins much more straightforward. DOE proposes using a calculation for energy consumption per unit time and a normalization factor to account for differences in glass and non-glass external surface area depending on the product class. During the framework public meeting and in written comments, some interested parties recommended that DOE use volume as the normalization factor for performance standards. (Manitowoc, Public Meeting Transcript, No. 15 at p. 56; EEI, Public Meeting Transcript, No. 15 at p. 116; NEEA, No. 18 at p. 3) Crown Tonka, in a written comment, recommended that the test metric be kWh per cubic foot (*i.e.*, energy consumption normalized by volume). (Crown Tonka, No. 23 at p. 1) The Joint Comment recommended that DOE use surface area as the normalization factor. (Joint Comment, No. 21 at p. 2) A comment submitted jointly by representatives of SCE, SMUD, and SDG&E (hereafter referred to as the Utilities Joint Comment) also stated that DOE should use surface area as a normalization factor. (Utilities Joint Comment, No. 32 at p. 7)

Many established metrics use a per-day time scale normalized by product volume. However, surface area is the key geometric characteristic related to both conduction and infiltration because volumetric normalization cannot directly account for the higher conduction and infiltration losses associated with glass doors and windows. Conduction and infiltration losses through glass become particularly important considerations as the ratio of glass door area to total wall area increases, as is the case in walk-ins designed for customer access. Using surface area as the normalization factor would account for these losses through any glass door or window used in a walk-in. Therefore, DOE proposes the use of surface area as a normalization factor for performance calculations of walk-ins. DOE requests comments on this proposed normalization method.

f. Daily Energy Consumption Coefficients

As discussed in section III.A.1, DOE proposes allowing manufacturers to group similar units together into a single ''basic model.'' This approach would reduce the testing burden as only one unit of each basic model would be subject to testing. However, in the case of envelopes, the equipment is so highly customized that each unit a manufacturer builds may be unique. For example, units may have identical materials, components, or construction methods, but may be built to varied dimensions, which could result in different energy consumption values being obtained using the proposed test methods.

In order to compare units that are similar enough to be included in the same basic model, but that are not identical, the test procedure allows for calculating daily energy consumption coefficients (or DECCs), using test results from a particular unit within a basic model, and then applying these DECCs to other units within a basic model to calculate the energy consumption of the other units. DECCs are essentially scaling factors that allow a manufacturer to change certain parameters of an envelope and calculate the corresponding change in energy consumption. In the case of today's proposed procedure, these parameters would be wall surface area, non-glass door surface area, glass display door surface area, glass wall and inset window surface area, infiltration due to opening of non-display type doors and infiltration reduction due to reduction devices in place on non-display doors, infiltration due to opening of display type doors and infiltration reduction due to reduction devices in place on display doors, and electrical energy consumption due to devices including, but not limited to, lights, anti-sweat heaters, and motors to drive air mixing fans. The expression for daily energy consumption is formulated on the assumptions that: (1) Energy consumption due to conduction losses

scales linearly with surface area; (2) energy consumption due to infiltration scales linearly with the number of doors of each type and total wall surface area; (3) energy consumption of anti-sweat door heaters scales linearly with total door surface area; and (4) energy consumption of other electrical components including lighting and stirring fans scales linearly with the interior volume of the envelope.

Once the DECCs are calculated from a tested walk-in envelope, they are combined to provide a linear expression of the daily energy consumption of any walk-in envelope of the same basic model as the tested envelope (that is, having the same construction methods, materials, components, and other energy consumption characteristics as the tested envelope), as follows:

$$E_{tot,system} = DECC_{non\text{-}glass} \times A_{non\text{-}glass,tot} + DECC_{glass} \times A_{glass,tot} + DECC_{infilt,disp_dr_opn} \times A_{disp_doors} + DECC_{disp_dr_device} \times n_{disp_doors} + DECC_{infilt,non\text{-}display,dr_opn} \times A_{non\text{-}display\text{-}doors} + DECC_{non\text{-}display\text{-}dr_device} \times n_{non\text{-}display\text{-}doors} + DECC_{light} \times V_{ref_space} + DECC_{ASH} \times A_{disp_doors} + DECC_{stir_fan} \times V_{ref_space} + DECC_{other} \times V_{ref_space} \quad \text{Eq. 5}$$

Where:

$DECC_{non\text{-}glass}$ = DECC for non-glass,
$A_{non\text{-}glass,tot}$ = total non-glass surface area,
$DECC_{glass,door}$ = DECC for glass doors,
$A_{glass,glass,\ tot}$ = total glass surface area, and
$DECC_{glass,wall}$ = DECC for glass walls and inset windows,
$A_{glass,wall,\ tot}$ = total glass wall and inset window surface area, and
$DECC_{infilt,disp_dr_opn}$ = DECC for opening of display type doors,
A_{disp_doors} = total area of display doors,
$DECC_{disp_dr_device}$ = DECC for infiltration reduction device in place for display doors,
n_{disp_doors} = total number of display doors,
$DECC_{infilt,non\text{-}display_,dr_opn}$ = DECC for non-display type doors,
$A_{non\text{-}display_doors}$ = total area of non-display type doors,
$DECC_{non\text{-}display_dr_device}$ = DECC for infiltration reduction device in place for non-display doors,
$n_{non\text{-}display_doors}$ = total number of non-display doors,
$DECC_{light}$ = DECC for lights,
V_{ref_space} = total enclosed refrigerated volume(ft^3),
$DECC_{ASH}$ = DECC for anti-sweat heaters,
$DECC_{stir_fan}$ = DECC for motors used to drive air mixing fans, and
$DECC_{other}$ = DECC for other electricity consuming devices.

Only applicable DECCs shall be used. For example, if a certain basic model did not have glass display doors, DECCs and variables pertaining to glass display doors would not be calculated, nor would they be included in the equation of energy consumption.

DOE believes that this approach would reduce the testing burden on manufacturers because it would not require manufacturers to test every unit produced with slight variations due to customer specification. However, by specifying a calculation methodology that manufacturers must use, the approach reduces the potential for inconsistency among manufacturers' rating methods, a concern that interested parties raised about DOE's previous idea to allow each manufacturer to develop its own AEDM for rating similar, but not identical, equipment. (See section III.A.3 for discussion of comments about this issue.) DOE requests comment on the proposed approach of specifying a formula based on DECCs, and on the assumptions that DOE made in generating this formula. DOE also asks if there are other parameters it should consider when calculating DECCs.

C. Refrigeration System

As previously discussed, a differentiation was made for the purposes of this test procedure between the envelope or structure of the walk-in cooler or freezer and the mechanical refrigeration system performing the physical work necessary to cool the interior space. The refrigeration system in this context is further subdivided into three categories, consisting of single-package systems containing both the condensing and evaporator units, split systems with the condensing unit and unit cooler physically separated and connected via refrigerant piping, and rack systems utilizing unit coolers, which receive refrigerant from a shared loop. The proposed test procedure contains separate specific provisions for the standardized testing of each refrigeration system type. Later sections provide a general overview of the test procedure for refrigeration systems of walk-in coolers and freezers and address some of the technical issues pertinent to the proposed test procedure. The following section also addresses issues raised by interested parties.

1. Overview of the Test Procedure

In accordance with EPCA, DOE proposes to adopt a test procedure for measuring the energy consumption of the refrigeration system of walk-in coolers and freezers. (42 U.S.C. 6314(a)(9)(B)(i)) DOE is considering adding the following definition for ''refrigeration system'' to 10 CFR part 431, subpart R: ''Refrigeration system means the mechanism used to create the refrigerated environment in the interior of a walk-in cooler or freezer, consisting of an integrated single-package refrigeration unit, or a split system with separate unit cooler and condensing unit sections, or a unit cooler that is connected to a central rack system; and including all controls and other components integral to the operation of this mechanism.'' DOE requests comments on this proposed definition.

In the framework document, DOE examined in detail six test procedures developed either by AHRI or ASHRAE that relate to the measurement of energy consumption of refrigeration equipment to determine whether they could apply to walk-in refrigeration systems. Although the six procedures collectively covered all of the components of the refrigeration systems of walk-in coolers and freezers (*i.e.*, the compressor, the condenser, the condensing unit or the unit cooler), each of these existing procedures covered only one or some of the components, and none applied to the testing of the complete refrigeration system. The rating conditions specified in those procedures also are generally not representative of typical conditions found in walk-in equipment.

During the framework public meeting and in a written comment, AHRI informed DOE that it has begun developing a standard for the performance rating of walk-in cooler and freezer refrigeration systems. (AHRI, Public Meeting Transcript, No. 15 at p. 50; AHRI, No. 33 at p. 3) This standard, AHRI Standard 1250P, ''2009 Standard for Performance Rating of Walk in Coolers and Freezers,'' was published in September of 2009. DOE has reviewed the final, published version of AHRI Standard 1250P and proposes to

incorporate it by reference into this test procedure.

The test procedure DOE proposes to adopt covers testing of refrigeration systems for walk-in coolers and freezers, including unit coolers and condensing units that are sold together as a matched system (*i.e.*, paired with each other in a way that optimizes the performance of the system), as well as unit coolers and condensing units sold separately, including unit coolers connected to compressor racks. The procedure describes the method for measuring the refrigeration capacity and the electrical energy consumption for the condensing unit and the unit cooler, as well as the off-cycle fan energy and the defrost subsystem under specified test conditions. The standard test conditions specify the dry-bulb and wet-bulb temperatures, the relative humidity for both the unit cooler and the condensing unit, and require that the system must operate under steady-state conditions. The test procedure groups walk-in cooler and freezer systems into four categories by distinguishing between indoor and outdoor locations for the condensing unit, and between coolers and freezers. The test procedure also specifies calculations for the nominal box loads for each of the four categories under typical low- and high-load conditions, expressed as a function of the ambient air temperature. (The ''nominal box load'' refers to the refrigeration load imposed on the system by the walk-in envelope. Similar to the way in which the envelope was assumed to be paired with a refrigeration system of a given EER to provide a means of comparison between different envelopes, DOE assumes that the refrigeration system is paired with an envelope of given heat transfer characteristics. This assumption is made for comparison purposes. See section III.B.3.a for further discussion of this concept.) For systems in which the condensing unit is located outdoors, the test procedure uses bin temperature data and bin hour data to represent the impact of the seasonal variation in outside ambient air temperature on energy use. The test procedure computes an annual walk-in efficiency factor, or AWEF, for the refrigeration system under a specified thermal load profile over a 24-hour operation period.

2. Test Conditions

DOE received several comments on test conditions. The Utilities Joint Comment stated that most of the potential energy savings can be achieved using floating head pressure and variable-speed evaporator fans, both of which are time-varying and weather dependent, and a steady-state test may not capture these savings adequately. (Utilities Joint Comment, No. 32 at p. 4) Manitowoc stated that energy usage can depend on the heat load in the box consisting of defrost energy and fan energy, both of which depend on the refrigeration system control strategy. (Manitowoc, Public Meeting Transcript, No. 15 at p. 76) NEEA stated that the test conditions should reflect variations in the location of the condensing unit, thermal load conditions, and outdoor air temperature. (NEEA, No. 18 at p. 3)

The test procedure DOE proposes specific conditions for both the interior and exterior of the walk-in to determine the net refrigeration capacity. The interior conditions of the unit cooler are specified as nominal temperature and humidity conditions: 2 °C dry-bulb and less than 50 percent relative humidity (RH) for coolers, and −23 °C dry-bulb and less than 50 percent RH for freezers. The proposed test procedure would measure both net refrigeration capacity and off-cycle fan power at those conditions for the unit cooler. For the condenser, the test procedure would specify three different ambient conditions for dry-bulb and wet-bulb temperatures: Hot (35 °C/24 °C), moderate (15 °C/12 °C) and cold (2 °C/1 °C). The purpose of specifying three sets of ambient conditions is to capture the variation in capacity under different ambient temperatures.

For two-capacity condensing units, the test procedure would measure the net refrigeration capacity under the same set of ambient conditions for the condenser at both the minimum and maximum capacity levels. Variable-speed condensing units would also have their refrigeration capacities measured at an additional intermediate capacity level. Because the test procedure provides for measurement of the compressor power and the fan power at two compressor capacity levels for two-speed systems and at three capacity levels for variable-speed systems at multiple outside ambient air temperature levels, DOE believes that the proposed test conditions reasonably reflect the energy savings that may be achieved through the control strategies referred to by interested parties. Also, as mentioned above, the proposed procedure includes a measurement of off-cycle fan power, which would account for energy savings due to variable-speed evaporator fans.

The Joint Comment stated that test procedures should account for partial-load conditions as well as maximum loading, and that test methods limited to maximum load conditions at steady-state operation are insufficient. (Joint Comment, No. 21 at p. 2) ACEEE also stated that the efficiency metric of the refrigeration system should reflect part-load conditions. (ACEEE, Public Meeting Transcript, No. 15 at p. 99) In the proposed test procedure, DOE has provided for testing of two-capacity and variable-capacity condensing units at the minimum capacity level, which would correspond to the appropriate low-load level condition for an appropriately sized unit. However, for a single-capacity unit, low-load conditions would lead to a higher frequency of equipment cycling because the equipment would be sized for a much larger load; that is, a load consistent with worst-case conditions. For single-speed equipment, the proposed test procedures do not capture the impact of this cyclic degradation. DOE believes that capturing the cyclic degradation is not necessary because, averaged over representative locations in the entire country, walk-in coolers may operate for many hours at the full-load condition. For instance, the daily pull-down-load in typical walk-in cooler and freezer installations is met over a period of 5 to 8 hours of full-load operation for a properly sized unit. Consequently, the impact of the cyclic degradation is not very significant for the walk-in cooler or freezer refrigeration system.

Craig noted that the refrigeration systems of walk-in equipment are often oversized to account for the worst weather conditions and additional pull-down load (Craig, Public Meeting Transcript, No. 15 at p. 97). Nor-Lake stated that its methodology for determining the refrigeration load for the walk-in takes into account the worst conditions over the typical annual cycle, as well as product load, pull-down load, the number of door openings, and duration (Nor-Lake, No. 30 at p. 2). The proposed test procedure computes the energy use on the basis of a nominal box load, which takes into account product load, infiltration load due to door openings, and transmission load through the box walls and roof. DOE believes that the values for the nominal box loads adequately reflect typical oversizing values. The proposed annual energy efficiency metric is based on weather conditions that are considered representative of the population-weighted average weather conditions of the country as a whole.

3. Test Methods

The net refrigeration capacity of the system is determined by one of the following test methods: (1) DX Dual Instrumentation measures the enthalpy change and the mass flow rate of the

refrigerant across the unit cooler using two independent measuring systems; or (2) DX Calibrated Box measures the enthalpy change and the mass flow rate of the refrigerant across the unit cooler and the heat input to the calibrated box. In the first method, the test unit cooler and the matched condensing unit are kept inside separate environmental chambers. In the second method, the condensing unit is placed inside the environmental chamber, while the unit cooler is kept inside a calibrated box, which is inside a temperature-controlled enclosure.

DOE believes the test methods are appropriate for walk-ins because they were adapted from AHRI Standard 420–2008, ''Performance rating of forced-circulation free-delivery unit coolers for refrigeration,'' and ASHRAE Standard 23, ''Methods of Testing for Rating Positive Displacement Refrigerant Compressors and Condensing Units,'' and have been widely used in the refrigeration industry for many years. Furthermore, these test methods were developed and approved by the industry and published by the industry trade association as a sufficiently adequate means of assessing the net refrigeration capacity of equipment that share many functional similarities with walk-ins, such as components, materials, and substances (*e.g.,* the refrigerant) that provide the mechanical means of refrigeration. The test methods DOE is proposing today also account for ways in which walk-in refrigeration systems differ from commercial refrigeration equipment; as in their operating conditions, configurations, or patterns of use. For example, condensing units of walk-in refrigeration systems may be located outdoors and experience a wider range of operating temperatures than commercial refrigeration, which is generally located indoors; the walk-in refrigeration test procedure specifies three different ambient temperatures at which to test, in order to approximate actual conditions under which the system might operate. Furthermore, DOE's proposed methods improve upon previously developed refrigeration test methods by accounting for the energy-saving effects of advanced technologies such as variable-speed fans and defrost control strategies.

4. Measurements and Calculations

The test procedure DOE proposes to adopt, AHRI Standard 1250P–2009, measures certain parameters, including the net refrigeration capacity and the off-cycle fan power for both coolers and freezers. The defrost power and thermal energy transferred to the defrost drain water are measured for a defrost cycle for freezers only. Separate calculation procedures for single-capacity, two-capacity, and variable-capacity equipment are included in the test procedure. The test procedure determines the annual walk-in energy factor, or AWEF, as the ratio of the annual net heat removed from the box, which includes the internal heat gains from non-refrigeration components but excludes the heat gains from the refrigeration components in the box, to the annual electrical energy consumption. The final metric determined by this procedure is a measure of efficiency. However, DOE is required by EPCA to establish ''a test procedure to measure * * * energy use.'' (42 U.S.C. 6314(a)(9)(B)(i)) In light of this requirement, DOE proposes that manufacturers determine both the AWEF and the annual energy consumption of their equipment using the test procedure, which will enable the test procedure to be consistent with the requirements of EPCA to develop test procedures that measure the energy consumption of walk-in equipment.

In the AHRI Standard 1250P–2009 calculations, the annual net heat removed from the nominal box is represented as a function of ambient temperature surrounding the condenser and the measured net refrigeration capacity at the highest test temperature. For refrigeration systems consisting of a unit cooler and a dedicated condensing unit, the annual net heat removed from the box can be calculated from the system capacity and, for systems located outdoors, the net heat removed from the nominal box at a given bin temperature weighted by the number of hours corresponding to the bin temperature. The temperature bin data listed in Table D1 of AHRI Standard 1250P–2009 has been constructed from the ambient temperatures over a typical meteorological year for a specified location, corresponding closely to the use cycle parameters prescribed in other DOE standards. For refrigeration systems consisting of a unit cooler connected to a remote rack, the net heat removed is a function of the unit cooler capacity at the test points specified in AHRI Standard 1250P–2009.

DOE is considering deriving the expressions for the annual net heat removed from the box, that is, the numerator of the equations for energy consumption, by simplifying the equations in AHRI Standard 1250P–2009. As an example, the calculation methodology for indoor coolers using AHRI Standard 1250P–2009 would be as follows:

The AWEF, for walk-in cooler systems with dedicated condensing units located indoors, is determined by

$$\mathrm{AWEF} = \sum_{j=1}^{n}\left[\mathrm{BL}\left(t_j\right)/\mathrm{E}\left(t_j\right)\right], \qquad \text{Eq. 6}$$

Where $\Sigma[BL(t_j)]$ is the annual net heat removed from the box over the course of the year, and $\Sigma[E(t_j)]$ is the annual energy consumption of the system. Thus,

$$\sum_{j=1}^{n}\mathrm{E}\left(t_j\right) = \sum_{j=1}^{n}\mathrm{BL}\left(t_j\right)/\mathrm{AWEF}. \qquad \text{Eq. 7}$$

AWEF is calculated directly using the test procedure, while $BL(t_j)$ is calculated by:

$$\mathrm{BL}\left(t_j\right) = \left[0.33\times\dot{\mathrm{BLH}}\left(t_j\right) + 0.67\times\dot{\mathrm{BLL}}\left(t_j\right)\right]\times n_j. \qquad \text{Eq. 8}$$

For indoor units, t_j is assumed to be constant; thus, n_j = 8760, the total number of hours in a year. BLH and BLL are given by, respectively,

$$\dot{BLH} = 0.7 \times \dot{q}_{ss}(90\ ^{o}F) \qquad \text{Eq. 9}$$

and

$$\dot{BLL} = 0.1 \times \dot{q}_{ss}(90\ ^{o}F), \qquad \text{Eq. 10}$$

Where q_{ss}(90 °F) is the system steady state refrigeration capacity at 90 °F. When terms are combined and the expression simplified, the equation for annual energy consumption becomes

$$\text{Annual Energy Consumption} = \frac{0.30 \times \dot{q}_{ss}(90\ ^{o}F) \times 8760}{\text{AWEF}}. \qquad \text{Eq. 11}$$

DOE requests comment on using these equations to derive annual energy consumption.

D. Compliance, Certification, and Enforcement

Finally, DOE addresses below compliance, certification, and enforcement issues involving walk-ins. At this time, DOE is not proposing any specific requirements for this equipment. As discussed below, DOE will consider addressing these issues in a separate rulemaking. Any data on which a manufacturer relies for the purposes of certifying compliance with any applicable standards that DOE promulgates for this equipment would be derived from the test procedure that DOE adopts. The adopted procedure would also be used by DOE during enforcement-related testing.

1. Provisions for Energy Conservation Standards Developed by the Department of Energy

The purpose of establishing compliance, certification, and enforcement regulations is to provide reasonable assurance that manufacturers appropriately test and accurately represent the performance characteristics of commercial equipment. DOE recently incorporated the standards prescribed by EISA 2007, including those for walk-ins, into 10 CFR parts 430 and 431. 74 FR 12074 (March 23, 2009). However, DOE has not yet proposed or issued amended energy conservation standards for walk-ins. DOE will consider issuing compliance, certification, and enforcement provisions for walk-ins in a future rulemaking. Therefore, today's notice proposes no certification, compliance, or enforcement provisions for energy conservation standards for walk-ins.

2. Provisions for Existing Design Standards Prescribed by Congress

DOE is responsible for enforcing Federal energy standards, whether those standards were developed through a DOE rulemaking pursuant to EPCA or prescribed by Congress. In EISA 2007, Congress prescribed design standards specifically for walk-ins that took effect on January 1, 2009. Typically, DOE establishes specific enforcement regulations for each product covered by existing standards, which may require manufacturers to file documents such as a compliance statement and a certification report. In a compliance statement, the manufacturer certifies its products meet the requirements. In a certification report, the manufacturer provides product-specific information that would enable DOE to determine whether the product meets the standard. DOE has already established compliance and certification requirements for other products.

Until DOE finalizes regulations that require compliance statements and certification reports for walk-ins, manufacturers will not be required to report data to DOE, but they must still meet all prescribed design standards that went into effect on January 1, 2009. If there is a question on compliance with design standards, the manufacturer must make a reasonable case that the equipment meets those standards.

To address concerns about the EISA 2007 design requirements for walk-ins, DOE maintains a Frequently Asked Questions page on the DOE Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/wicf_faqs.html*.

IV. Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under the National Environmental Policy Act

In this proposed rule, DOE proposes to adopt test procedures and related provisions for walk-in equipment. The test procedures would be used initially for the purpose of considering the adoption of energy conservation standards for walk-ins, and DOE would require their use only if standards were subsequently adopted. The proposed test procedures will not affect the quality or distribution of energy and, therefore, will not result in environmental impacts. Therefore, DOE determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR part 1021. More specifically, today's proposed rule is covered by the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461 (August 16, 2002)), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site, *http://www.gc.doe.gov*.

DOE reviewed the test procedures considered in today's notice of proposed rulemaking under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. As discussed in more detail below, DOE found that because the proposed test procedures have not previously been required of

manufacturers, all manufacturers, including small manufacturers, could potentially experience a financial burden associated with new testing requirements. While examining this issue, DOE determined that it could not certify that the proposed rule, if promulgated, would not have a significant effect on a substantial number of small entities. Therefore, DOE has prepared an IRFA for this rulemaking. The IRFA describes potential impacts on small businesses associated with walk-in cooler and freezer testing requirements.

DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration for review.

1. Reasons for the Proposed Rule

Title III of the EPCA sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. NECPA (Pub. L. 95–619) amended EPCA to add Part C of title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) (These parts were subsequently redesignated as Parts A and A–1, respectively, for editorial reasons.) Section 312 of EISA 2007 further amended EPCA by adding certain equipment to this energy conservation program, including walk-in coolers and walk-in freezers (collectively ''walk-in equipment'' or ''walk-ins''), the subject of this rulemaking. (42 U.S.C 6311(1), (2), 6313(f) and 6314(a)(9)) The proposed rule would establish a test procedure for walk-in coolers and walk-in freezers.

2. Objectives of, and Legal Basis for, the Proposed Rule

Under EPCA, the overall energy conservation program consists essentially of the following parts: Testing, labeling, and Federal energy conservation standards. The testing requirements for covered equipment consist of test procedures, prescribed under EPCA. The test procedures, if adopted, would be used in one of three ways: (1) Any data from the use of the test procedure, would be used by DOE as a basis for developing standards for walk-in equipment; (2) the procedure would be used by DOE when determining equipment compliance with those standards; and (3) manufacturers of covered equipment would be required to use the procedure as the basis for establishing that their equipment complies with the relevant energy conservation standards promulgated pursuant to EPCA and when making representations regarding equipment efficiency.

Section 343 of EPCA (42 U.S.C. 6314) sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures for covered equipment. That provision requires that the test procedures promulgated by DOE be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of the covered equipment during a representative average use cycle. It also requires that the test procedure not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) Further information concerning the background of this rulemaking is provided in Section I of this preamble.

3. Description and Estimated Number of Small Entities Regulated

Small businesses, as defined by the Small Business Administration (SBA) for the walk-in cooler and freezer manufacturing industry, are manufacturing enterprises with 750 employees or fewer. DOE used the small business size standards published on January 31, 1996, as amended, by the SBA to determine whether any small entities would be required to comply with the rule. 61 FR 3286; see also 65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (September 5, 2000). The size standards are codified at 13 CFR Part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*. Walk-in cooler and freezer equipment manufacturing is classified under NAICS 333415, Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.

DOE reviewed AHRI's listing of commercial refrigeration equipment manufacturer members and surveyed the industry to develop a list of domestic manufacturers. DOE also asked stakeholders and AHRI representatives within the industry if they were aware of any other small business manufacturers. DOE then examined publicly available data, including regulatory databases such as state databases and the National Sanitation Foundation (NSF) Section 7 database. DOE identified at least 37 small manufacturers of walk-in cooler and freezer envelopes, and at least 5 small manufacturers of walk-in cooler and freezer refrigeration systems. However, some manufacturers that DOE interviewed indicated that there could be many more small business manufacturers than were publicly listed. Such unlisted manufacturers could be very small (< 50 employees) and serve only a local market. They also may not submit any information to state or national regulators such as NSF. Therefore, DOE believes there may be more affected small entities than it estimated and seeks comment on the number of small entities that may be impacted by the test procedure.

4. Description and Estimate of Compliance Requirements

Potential impacts of the proposed test procedures on manufacturers, including small businesses, come from impacts associated with the cost of testing. In this test procedure NOPR, DOE proposes measures to reduce the financial burden of testing on all manufacturers, including small business manufacturers. First, where the procedure gives manufacturers options in terms of materials, equipment, or methodology to be used in performing the test, DOE proposes to allow manufacturers to use the lowest-cost option, where possible. For instance, ASTM E741–06 allows manufacturers to use any of about 12 tracer gases. DOE specifies a tracer gas to ensure that all manufacturers report at the same accuracy, but specifies the use of carbon dioxide, which would be the lowest cost option. Second, DOE proposes to reduce the total number of tests manufacturers would have to perform by allowing them to group similar equipment into a single family, or basic model, and only requiring them to test one unit of each basic model. (See section III.A.1 for a more detailed discussion of the basic model proposal.)

The proposed test procedure for envelopes would require manufacturers to perform testing in accordance with two industry test standards: ASTM C1303–08, ''Standard Test Method of Predicting Long-Term Thermal Resistance of Closed-Cell Foam Insulation,'' and ASTM E741–06, ''Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution.'' DOE spoke with industry experts to determine the approximate cost of each test and determined that a test using ASTM C1303–08 costs between approximately $5,000 and $10,000, and a test using ASTM E741–06 costs between $1,000 and $5,000. A typical manufacturer would have approximately 8 basic models, so the total cost of compliance would be approximately $84,000.

The proposed test procedure for refrigeration systems would require manufacturers to perform testing in accordance with a single industry test standard: AHRI Standard 1250P–2009, ''2009 Standard for Performance Rating of Walk-In Coolers and Freezers.'' Because this test was recently developed by the industry and has not yet been widely used to test refrigeration systems, DOE could not determine how much the test currently costs. However, DOE researched the cost of other, similar standards and subsequently estimated that a test using AHRI Standard 1250P–2009 would likely cost approximately $5,000. A typical refrigeration manufacturer could have approximately 50 basic models, making the total cost of compliance approximately $250,000.

Because the cost of running each test is the same for all manufacturers, and because DOE has proposed measures to reduce burden on all manufacturers, DOE believes that all manufacturers would incur comparable costs as a result of the proposed test procedures. However, DOE does not expect that small manufacturers would have fewer basic models than large manufacturers, because the equipment is highly customized throughout the industry. A small manufacturer could have the same total cost of testing as a large manufacturer, but this cost would be a higher percentage of a small manufacturer's annual revenues. Thus, DOE cannot certify that the differential impact associated with walk-in cooler and freezer test procedures on small businesses would not be significant.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

6. Significant Alternatives to the Rule

DOE considered a number of alternatives to the proposed test procedure, including test procedures that incorporate industry test standards other than the three proposed standards, ASTM C1303–08, ASTM E741–06, and AHRI Standard 1250P–2009, described above. Instead of requiring ASTM C1303–08 for testing the long-term thermal properties of insulation, DOE could require only ASTM C518–04, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus,'' which tests the thermal properties of insulation at a certain point in time (*i.e.,* the point of manufacture). (Because ASTM C1303–08 incorporates ASTM C518–04, requiring ASTM C1303–08 is consistent with the statutory requirement for basing measurement of the thermal conductivity of the insulation on ASTM C518–04.) (42 U.S.C. 6314(a)(9)(A)) A test of ASTM C518–04 alone costs approximately $500–$1,000. However, DOE is considering ASTM C1303 for other reasons; namely, the concern that ASTM C518–04 alone does not capture the performance characteristics of a walk-in over the period of its use, because it does not account for significant changes in the thermal properties of insulation over time. For more discussion on this issue, see Section III.B.2.a.

DOE also considered ASTM E1827–96(2007), ''Standard Test Methods for Determining Airtightness of Buildings Using an Orifice Blower Door,'' instead of ASTM E741–06, for testing infiltration. ASTM E1827–96(2007) costs about $300–$500 for a single test. However, DOE believes that ASTM E1827–96(2007) is not appropriate for walk-ins because it is conducted by placing test equipment in the door, and thus does not account for in infiltration through the door, which is a major component of infiltration in walk-ins. In addition, it is not intended for testing envelope systems, such as a walk-in, that have a large temperature difference between the internal and external air. Therefore, to complete a blower-door test, the walk-in would not be able to be tested at or close to operational temperatures, resulting in a test that does not accurately reflect its performance. For more discussion on this issue, see Section III.B.2.b.

In the framework document, DOE considered adapting an existing test procedure for commercial refrigeration equipment, such as ARI Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets,'' as an alternative to AHRI Standard 1250P–2009. The two tests are based on a similar methodology for rating refrigeration equipment in general, but ARI Standard 1200–2006 requires testing at only one set of ambient conditions, whereas AHRI Standard 1250P–2009 requires testing at 3 sets of ambient conditions for refrigeration systems with the condensing units located outdoors. The additional time required to test the system at 3 sets of conditions would incur additional cost and could make AHRI Standard 1250P–2009 more burdensome than ARI Standard 1200–2006. However, DOE believes that AHRI Standard 1250P–2009 is more appropriate for testing walk-ins than ARI Standard 1200–2006. A test procedure based on ARI Standard 1200–2006 would require the entire walk-in to be tested as a whole, but manufacturers might not have a large enough test facility to make the measurements necessary for the ARI 1200–2006 test procedure in a controlled environment. Also, the refrigeration system is often manufactured separately from the insulated envelope. In this case, whoever assembled the two components would bear the burden of conducting ARI 1200–2006; this party might not be the manufacturer of the refrigeration system. In contrast, AHRI 1250P–2009 tests only the refrigeration system. It does not require a larger test chamber than other, similar tests, and can be conducted by the manufacturer of the refrigeration system. Furthermore, because AHRI 1250P–2009 requires the system to be tested at 3 ambient temperatures, it captures energy savings from features (for example, floating head pressure) that allow the system to use less energy at lower ambient temperatures. For more discussion on this issue, see Section III.A.2.

DOE requests comment on the impacts to small business manufacturers for these and any other possible alternatives to the proposed rule. DOE will consider any comments received regarding impacts to small business manufacturers for all the alternatives identified.

D. Review Under the Paperwork Reduction Act

Today's proposed rule contains no record-keeping requirements. Therefore, today's notice of proposed rulemaking would not impose any new reporting requirements requiring clearance by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Department recognizes, however, that if it adopts standards for walk-in coolers and walk-in freezers, once the standards become operative, manufacturers may become subject to record-keeping requirements associated with compliance with the standards. Therefore, the Department will comply with the record-keeping requirements of the Paperwork Reduction Act if and when energy conservation standards are adopted.

E. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. With respect to a proposed regulatory

action 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 (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). The proposed rule published today does not provide for any Federal mandate likely to result in an aggregate expenditure of $100 million or more. Therefore, the UMRA does not require a cost benefit analysis of today's proposal.

F. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's proposed rule and has determined that it does not preempt State law and does 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of OIRA also did not designate today's action as a significant energy action. Therefore, it is not a significant energy action, and DOE has not prepared a Statement of Energy Effects.

K. Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988) that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

L. Review Under Section 32 of the Federal Energy Administration (FEA) Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788) Section 32 provides in part that, where a proposed rule contains or involves use of commercial standards, the rulemaking must inform the public of the use and background of such standards. The rule proposed in this notice incorporates testing methods contained in the following commercial standards: ASTM C1303–08, ''Standard Test Method of Predicting Long-Term Thermal Resistance of Closed-Cell Foam Insulation;'' ASTM E741–06, ''Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution;'' and AHRI Standard 1250P, ''2009 Standard for Performance Rating of Walk in Coolers and Freezers.'' The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, *i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review. As required by section 32(c) of the Federal Energy Administration Act, of 1974, as amended, DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission before prescribing a final rule concerning the impact on competition of requiring manufacturers to use the methods contained in these standards to test walk-in equipment.

V. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are provided in the **DATES** and **ADDRESSES** sections at the beginning of this document. Anyone who wants to attend the public meeting must notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov*. Persons who wish to speak should include in their request a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests that those persons who are scheduled to speak submit a copy of their statements at least one week prior to the public meeting. DOE may permit any person who cannot supply an advance copy of this statement to participate, if that person has made alternative arrangements with the Building Technologies Program in advance. When necessary, the request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The public meeting will be conducted in an informal, conference style. The meeting will not be a judicial or evidentiary public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). Discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws is not permitted.

DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. A court reporter will record the proceedings and prepare a transcript.

At the public meeting, DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant may present a prepared general statement (within time limits determined by DOE) before the discussion of specific topics. Other participants may comment briefly on any general statements. At the end of the prepared statements on each specific topic, participants may clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants. DOE representatives may also ask questions about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of procedures needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document to the address provided at the beginning of this notice. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items, (2) whether and why such items are customarily

treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) a date upon which such information might lose its confidential nature due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments on the following issues:

1. Test Procedure Improvements

DOE requests comments on improvements in the test procedures that it should consider. In submitting comments, interested parties should state the nature of the recommended modification and an explanation of how it improves upon the test procedure proposed in this NOPR. See section II for details.

2. Basic Model

Because walk-in equipment tends to be highly customized, DOE is considering allowing manufacturers to group similar walk-in equipment under a single ''basic model'' and only subjecting one unit of each basic model to testing. DOE will use the term ''basic model'' to represent a single family of walk-in equipment, consisting of walk-in equipment or models of equipment that do not have any differentiating electrical, physical, or functional features that significantly affect energy consumption characteristics. DOE requests comments on the proposed basic model approach. See section III.A.1 for details.

3. Separate Envelope and Refrigeration Tests

For any walk-in, two different manufacturers may make the two main components: The envelope, or insulated box, and the refrigeration system. In this notice, DOE proposes separate test procedures for the envelope and the refrigeration system. The envelope manufacturer would be responsible for testing the envelope according to the envelope test procedure, and the refrigeration system manufacturer would be responsible for testing the refrigeration system according to the refrigeration system test procedure. The purpose of this provision is to accurately reflect the structure of the walk-in market and assign testing responsibilities to the equipment manufacturers. DOE requests comments on the proposed approach to develop separate test procedures. See section III.A.4 for details.

4. Definition of Envelope

DOE requests comments on the following definition of ''envelope:'' ''(1) a piece of equipment that is the portion of a walk-in cooler or walk-in freezer that isolates the interior, refrigerated environment from the ambient, external environment; and (2) all energy-consuming components of the walk-in cooler or walk-in freezer that are not part of its refrigeration system.'' See section III.B.1 for details.

5. Effect of Impermeable Skins on Long-Term R-Value

DOE received many comments on the framework document regarding long-term R-value. After researching the issue, DOE determined that the R-value of insulating foams diminish after manufacture at rates that vary by material type and environmental conditions. Diffusion of gases and moisture infiltration are the key mechanisms of R-value decline. Many manufacturers seek to prevent or delay diffusion and moisture infiltration by sealing the foam in a ''skin,'' typically a metal material. DOE received comments suggesting that these skins can be made fully impermeable while other comments argued that full impermeability cannot be achieved due to imperfect sealing at panel joints, imperfect adherence of foam to metal during manufacture, deliberate punctures for fixtures and shelving, and/or inadvertent punctures that typically occur in the field. DOE requests feedback on this issue, including the submission of test results on the impact of impermeable skins on long-term R-value. Specifically, DOE requests that interested parties submit or identify any peer-reviewed, published data pertaining to the efficacy of skins in preventing or delaying R-value decline. See section III.B.2.a for details.

6. Measuring Long-Term R-Value Using American Society for Testing and Materials (ASTM) C1303–08

DOE proposes accounting for R-value decline due to diffusion of gases by requiring manufacturers to condition their foam prior to testing. DOE proposes requiring manufacturers to condition foam using ASTM C1303–08, which conditions foam using an accelerated aging method prior to testing its R-value. Because ASTM C1303–08 uses ASTM C518–2004, using ASTM C1303–08 would be consistent with EPCA. (42 U.S.C. 6314(a)(9)(A)(ii)) DOE requests feedback on the proposal to require conditioning and testing foam using ASTM C1303–08. DOE recognizes that ASTM C1303–08 is designed for unfaced and permeably faced foams rather than the impermeably faced foams typical of walk-ins. DOE requests feedback on the use of ASTM C1303–08 for foams that will be impermeably faced.

DOE is considering several exceptions and clarifications to ASTM C1303–08 to satisfy requirements of EPCA and to make the test procedure more applicable to walk-ins. DOE requests feedback on the number of samples and sample thicknesses, the use of interpolation of results for foam thicknesses within the specified ±0.5 inch range, and the use of the core stack R-value out of a sample size of three stacks for the purpose of calculating walk-in energy use.

Lastly, ASTM C1303–08 cannot be used for non-foam materials, but DOE is not aware of any non-foam materials currently being used as insulation in walk-in coolers or freezers. DOE requests comment on whether non-foam technologies, such as vacuum insulated panels or aerogels, are likely to be commercially available for walk-ins within the next 5 years. See section III.B.2.a for details.

7. Infiltration

Air infiltration causes a substantial amount of heat gain through the envelope. After evaluating several methods of testing and measuring the air infiltration, DOE proposes requiring ASTM E741–06, also referred to as the gas tracer method, as the test procedure for measuring steady-state infiltration and the effectiveness of infiltration reduction devices (for air infiltration unrelated to door opening events). Because door opening also contributes to infiltration, DOE proposes accounting for this infiltration pathway. DOE does not, however, propose to require manufacturers to individually measure the infiltration from door opening events, due to the complexity of this type of testing and the availability of accurate analytical models, which would make a test procedure very difficult to implement. DOE proposes using analytical methods based on ASHRAE fundamentals as well as assumed door-opening frequency and duration and the measured infiltration barrier effectiveness to calculate the air infiltration associated with each door-opening event. DOE requests comments on the proposed test method for steady-state infiltration. DOE requests input

and feedback on the calculations and assumptions proposed for determining infiltration from door-opening events. See section III.B.2.b for details on the proposed analytical methods.

8. Nominal Coefficient of Performance of Refrigeration

In developing a test procedure for the envelope alone, without a refrigeration system, DOE had to determine the energy consumption associated with heat gain through the envelope due to conduction and infiltration. DOE proposes to assume a nominal EER for the refrigeration system to convert the heat gain through the box into a measure of the energy consumption of a theoretical refrigeration system that would be removing this heat from the box. For comparison purposes, DOE recommends that the EER be 12.4 Btu per watt hour (Btu/Wh) for coolers and 6.3 Btu/Wh for freezers because these are typical EER values. DOE requests comments on this proposal and on the assumed value for the EER. See section III.B.3.a for details.

9. Measuring the U-Value of Glass

Because conduction through glass components can be a significant source of heat transfer through walk-in envelopes, DOE seeks to order to account for improvements in glass performance in the test procedure. DOE proposes two options for manufacturers: (1) If manufacturers of glass doors used in walk-ins participate in the NFRC rating program, the performance of the door shall be simply read from its label and used for calculations in this test procedure. If glass door manufacturers do not participate in the NFRC rating program, then (2) DOE proposes to require manufacturers to use the LBNL's publicly available Window 5.2 software package to calculate glass door performance. DOE seeks comment on the availability of performance data on glass products used in walk-in applications, glass component manufacturers' participation in third party certification programs such as NFRC, and the proposed method for predicting the thermal performance of glass components using Window 5.2. See section III.B.3.b for more information.

10. Floor R-Value

EPCA does not require walk-in cooler floors to meet a specific R-value. In many instances, walk-in coolers are shipped without additional insulating floors and are simply placed on top of an existing surface, such as a concrete slab. Since concrete is the floor surface most commonly used with floorless walk-in coolers DOE is considering using the R-value of 6-inch concrete to calculate energy lost through these floors. DOE proposes using an R-value of 0.6 ft^2-° F-hr/Btu for 6-inch concrete. Since walk-in freezers are required to have a floor insulation of R–28, DOE will assume this R-value for purposes of calculating the energy loss through walk-in freezer floors if the manufacturer does not provide any additional insulating surface. DOE requests comments on these assumptions. See section III.B.3.b for details.

11. Electrical Duty Cycle

As part of the envelope test procedure, DOE recommends calculating the electricity consumption of lights, sensors, and other miscellaneous electrical devices not considered part of the refrigeration equipment using name-plate rating and an assumed daily operation. DOE incorporates assumed duty cycles of lights, anti-sweat heaters, and other devices based on whether they are controlled by a preset control system. While these assumptions may not reflect the actual behaviorally related energy consumption, they will provide a means for comparison. DOE requests comments on whether the duty cycle assumptions are appropriate. See section III.B.3.d for details.

12. Normalization Factor

For the envelope test procedure, DOE proposes to normalize the energy consumption by a certain factor related to the size of the walk-in so that manufacturers of larger walk-ins and walk-ins with glass doors are not unfairly penalized. DOE believes that the surface area of the envelope is an appropriate normalization factor, because surface area is the key geometric characteristic related to both conduction and infiltration and is particularly important as the ratio of glass door area to wall area increases. DOE requests comments on the proposal to normalize the energy consumption by the surface area of the walk-in. See section III.B.3.e for details.

13. Daily Energy Consumption Coefficients

In order to compare envelopes that are similar enough to be included in the same basic model but are not identical, the test procedure allows for calculating Daily Energy Consumption Coefficients, or DECCs, using test results from a particular envelope within a basic model, and then applying these DECCs to other envelopes within a basic model to calculate the energy consumption of the other units. DECCs are essentially scaling factors that allow a manufacturer to change certain parameters of an envelope and calculate the corresponding change in energy consumption. DOE believes that this approach would reduce the testing burden on manufacturers because it would not require manufacturers to test every unit produced with slight variations due to customer specification. DOE requests comment on this rating methodology. For formulas and more information, see section III.B.3.f.

14. Definition of Refrigeration System

DOE requests comments on the following definition of ''refrigeration system:'' ''the mechanism used to create the refrigerated environment in the interior of a walk-in cooler or freezer, consisting of an integrated single-package refrigeration unit, or a split system with separate unit cooler and condensing unit sections, or a unit cooler that is connected to a central rack system; and including all controls and other components integral to the operation of this mechanism.'' See section III.C.1 for details.

15. Measurements and Calculations of Energy Use of Refrigeration Systems

The test procedure DOE proposes to adopt, AHRI Standard 1250P–2009, determines the annual walk-in energy factor, or AWEF, which is a measure of the efficiency of a walk-in's refrigeration system. However, DOE is required by EPCA to establish ''a test procedure to measure * * * energy use.'' (42 U.S.C. 6314(a)(9)(B)(i)) In light of this requirement, DOE proposes that manufacturers determine both the AWEF and the annual energy consumption of their equipment using the test procedure, which will enable the test procedure to be consistent with the requirements of EPCA to develop test procedures that measure the energy consumption of walk-in equipment. DOE is considering satisfying the statutory requirement by deriving the energy consumption of the walk-in refrigeration system from data obtained when the test procedure is performed. DOE's derivation process, and further information, can be found in section III.C.4.

16. Impacts on Small Businesses

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a

substantial number of small entities. Upon examination of this NOPR, DOE could not certify that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities; therefore, DOE prepared an IRFA for this rule. DOE requests comment on the number of small businesses affected by the proposed rule, and seeks comment on impacts to small business manufacturers for any possible alternatives to the proposed rule. More information, along with the text of the IRFA, can be found in section IV.C.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 14, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 431 of chapter II of title 10, of the Code of Federal Regulations, to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.302 is amended by adding, in alphabetical order, definitions for ''Basic model,'' ''Envelope,'' ''Refrigeration system,'' and ''Walk-in equipment'' to read as follows:

§ 431.302 Definitions concerning walk-in coolers and walk-in freezers.

Basic Model means all units of a given type of walk-in equipment manufactured by a single manufacturer, and—

(1) With respect to envelopes, which do not have any differing construction methods, materials, components, or other characteristics that significantly affect the energy consumption characteristics.

(2) With respect to refrigeration systems, which have the same primary energy source and which do not have any differing electrical, physical, or functional characteristics that significantly affect energy consumption.

Envelope means (1) the portion of a walk-in cooler or walk-in freezer that isolates the interior, refrigerated environment from the ambient, external environment; and (2) all energy-consuming components of the walk-in cooler or walk-in freezer that are not part of its refrigeration system.

Refrigeration system means the mechanism used to create the refrigerated environment in the interior of a walk-in cooler or freezer, consisting of an integrated single-package refrigeration unit, or a split system with separate unit cooler and condensing unit sections, or a unit cooler that is connected to a central rack system; and including all controls and other components integral to the operation of this mechanism.

* * * * *

Walk-in equipment means either the envelope or the refrigeration system of a walk-in cooler or freezer.

3. Section 431.303 is amended by adding new paragraphs (b)(2), (b)(3), and (c) to read as follows:

§ 431.303 Materials incorporated by reference.

* * * * *

(b) * * *

(2) ASTM C1303–08, Standard Test Method of Predicting Long Term Thermal Resistance of Closed-Cell Foam Insulation, approved September 15, 2008, IBR approved for § 431.304.

(3) ASTM E741–06, Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution, approved October 1, 2006, IBR approved for § 431.304.

(c) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Boulevard, Suite 500, Arlington, VA 22201, (703) 600–0366, or *http://www.ahrinet.org.*

(1) AHRI Standard 1250P–2009, 2009 Standard for Performance Rating of Walk-In Coolers and Freezers, approved September 2009, IBR approved for § 431.304.

(2) Reserved.

4. Section 431.304 is revised to read as follows:

§ 431.304 Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers.

(a) *Scope.* This section provides test procedures for measuring, pursuant to EPCA, the energy consumption of walk-in coolers and walk-in freezers.

(b) *Testing and Calculations.*

(1) Determine the energy consumption of walk-in cooler and walk-in freezer envelopes by conducting the test procedure specified in Appendix A to this subpart.

(2) Determine the U-value of glass components from the product label in compliance with the National Fenestration Rating Council's Product Certification Program, PCP–2007, or by using the Window 5.2 software to calculate the performance of the glass.

(3) Determine the Annual Walk-in Efficiency Factor of walk-in cooler and walk-in freezer refrigeration systems by conducting the test procedure set forth in AHRI Standard 1250P–2009 (incorporated by reference, see § 431.303).

(4) Determine the energy consumption of walk-in cooler and walk-in freezer refrigeration systems by:

(i) For refrigeration systems with the condensing unit located inside a conditioned space, performing the following calculations for coolers and freezers, respectively:

$$\text{Annual Energy Consumption}\ (\text{coolers}) = \frac{0.30 \times \dot{q}_{ss}\,(90\ ^{\circ}\text{F}) \times 8760}{\text{Annual Walk-in Efficiency Factor}}$$

$$\text{Annual Energy Consumption}\ (\text{freezers}) = \frac{0.53 \times \dot{q}_{ss}\,(90\ ^{\circ}\text{F}) \times 8760}{\text{Annual Walk-in Efficiency Factor}}$$

Where q_{ss} (90 °F) is the steady state net refrigeration capacity measured at an ambient condition of 90 °F, and the Annual Walk-In Efficiency Factor is calculated from the results of the test procedures set forth in

AHRI Standard 1250P–2009 (incorporated by reference, see § 431.303).

(ii) For refrigeration systems with the condensing unit located outdoors, performing the following calculations for coolers and freezers, respectively:

$$\text{Annual Energy Consumption (coolers)} = \frac{\sum_{j=1}^{n}\left[0.24\times\dot{q}_{ss}(95\ ^{o}F)+0.06\times\frac{\dot{q}_{ss}(95\ ^{o}F)\times(t_j-35)}{60}\right]\times n_j}{\text{Annual Walk-in Efficency Factor}}$$

$$\text{Annual Energy Consumption (freezers)} = \frac{\sum_{j=1}^{n}\left[0.28\times\dot{q}_{ss}(95\ ^{o}F)+0.25\times\frac{\dot{q}_{ss}(95\ ^{o}F)\times(t_j+10)}{105}\right]\times n_j}{\text{Annual Walk-in Efficency Factor}}$$

Where q_{ss} (95 °F) is the steady state net refrigeration capacity measured at an ambient condition of 95 °F; t_j and n_j represent the outdoor temperature at each bin j and the number of hours in each bin j, respectively, for the temperature bins listed in Table D1 of AHRI Standard 1250P–2009 (incorporated by reference, see § 431.303); and the Annual Walk-In Efficiency Factor is calculated from the results of the test procedures set forth in AHRI Standard 1250P–2009 (incorporated by reference, see § 431.303).

(iii) For refrigeration systems consisting of a unit cooler connected to a rack system, performing the following calculations for coolers and freezers, respectively:

$$\text{Annual Energy Consumption (coolers)} = \frac{0.30\times\dot{q}_{mix,evap}\times 8760}{\text{Annual Walk-in Efficiency Factor}}$$

$$\text{Annual Energy Consumption (freezers)} = \frac{0.53\times\dot{q}_{mix,evap}\times 8760}{\text{Annual Walk-in Efficiency Factor}}$$

Where $q_{mix,evap}$ is the net capacity of the evaporator coil, determined by testing the unit cooler at the 25 °F suction dewpoint for a cooler and the −20 °F suction dewpoint for a freezer, at the maximum evaporator fan speed, according to AHRI standard 1250P–2009 (incorporated by reference, see § 431.303); and the Annual Walk-in Efficiency Factor is calculated from the results of the test procedures set forth in AHRI Standard 1250P–2009 (incorporated by reference, see § 431.303).

5. Appendix A is added to subpart R of part 431 to read as follows:

Appendix A to Subpart R of Part 431—Uniform Test Method for the Measurement of Energy Consumption of the Envelopes of Walk-In Coolers and Walk-In Freezers

1.0 Scope

This appendix covers the test requirements used to measure the energy consumption of the envelopes of walk-in coolers and walk-in freezers.

2.0 Definitions

The definitions contained in § 431.302 are applicable to this appendix.

2.1 Additional Definitions

(a) Unless explicitly stated otherwise, the surface area for all measurements is the area as measured on the external surface of the walk-in.

(b) A device or control system that ''automatically'' opens and closes doors without direct user contact (*i.e.*, a motion sensor that senses when a forklift is approaching the entrance to a door, opens, and then closes after the forklift has passed).

(c) Unless explicitly stated otherwise, all calculations and test procedure measurements shall use the temperature and relative humidity data shown in Table A.1. For installations where two or more walk-in envelopes share any surface(s), the ''external conditions'' of the shared surface(s) should reflect the internal conditions of the neighboring walk-in.

TABLE A.1—TEMPERATURE AND RELATIVE HUMIDITY CONDITIONS

	Value	Units
Internal Conditions (cooled space within envelope)		
Cooler:		
Dry Bulb Temperature ...	35	F
Relative Humidity	60	%
Freezer:		
Dry Bulb Temperature ...	−10	F
Relative Humidity	60	%
External Conditions (space external to the envelope)		
Freezer and Cooler:		
Dry Bulb Temperature ...	75	F
Relative Humidity	40	%

3.0 Test Apparatus and General Instructions

3.1 Conduction Heat Gain

3.1.1 Glass Doors

(a) All dimensional measurements for glass doors include the door frame and glass.

(b) Calculate the individual and total glass door surface area (A_{glass}) as follows:

$$A_{glass,i} = \left(W_{glass,\,i} \times H_{glass,\,i}\right) \times n_i \qquad (3\text{-}1)$$

$$A_{glass,tot} = \sum_{1}^{i} \left(W_{glass,\,i} \times H_{glass,\,i}\right) \times n_i \qquad (3\text{-}2)$$

Where:

i = index for each type of unique glass door used in cooler or freezer being tested,

n_i = number of identical glass doors of type i,

$W_{glass,i}$ = width of glass door (including door frame), and

$H_{glass,i}$ = height of glass door (including door frame).

(c) Calculate the temperature differential(s) ΔT_i for each unique glass door (°F) as follows:

$$\Delta T_i = T_{DB,int,i} - T_{DB,ext,i} \qquad (3\text{-}3)$$

Where:

i = Index for each type of unique glass door used in cooler or freezer being tested,

$T_{DB,int,i}$ = dry-bulb air temperature inside the cooler or freezer, °F

$T_{DB,ext,i}$ = dry-bulb air temperature external to cooler or freezer, °F

(d) Calculate the conduction load through the glass doors, ($Q_{cond\text{-}glass,door}$):

$$Q_{cond\text{-}glass,door} = \sum_{1}^{i} A_{glass,i} \times \Delta T_i \times U_{glass,i} \times n_i \qquad (3\text{-}4)$$

Where:

n_i = number of identical glass doors of type i;

$U_{glass,i}$ = thermal transmittance, U-value of the door, of type i, Btu/h-ft²-°F;

$A_{glass,i}$ = total surface area of all walk-in glass doors of type i, ft²; and

ΔT_I = temperature differential between refrigerated and adjacent zones, °F.

3.1.2 Wall Glass and Doors With Inset Glass

(a) Calculate the individual and total glass surface area ($A_{glass,wall}$), as follows:

$$A_{glass,wall,i} = \left(W_{glass,wall,i} \times H_{glass,wall,i}\right) \times n_i \qquad (3\text{-}5)$$

$$A_{glass,wall,tot} = \sum_{1}^{i} \left(W_{glass,wall,i} \times H_{glass,wall,i}\right) \times n_i \qquad (3\text{-}6)$$

Where:

i = index for each type of unique glass door used in cooler or freezer being tested,

n_i = number of identical glass walls or insets of type i,

$W_{glass,wall,,i}$ = width of glass wall (including glass framing)

$H_{glass,wall,i}$ = height of glass wall (including glass framing)

(b) Calculate the temperature differential(s) $\Delta T_{glass,wall,i}$ for each unique glass wall (°F), as follows:

$$\Delta T_{glass,wall,i} = T_{DB,int,glass,wall,i} - T_{DB,ext,glass,wall,i} \qquad (3\text{-}7)$$

Where:

i = Index for each type of unique glass door used in cooler or freezer

$T_{DB,int,glass,wall,i}$ = dry-bulb air temperature inside the cooler or freezer, °F

$T_{DB,ext,glass,wall,i}$ = dry-bulb air temperature external to cooler or freezer, °F

(c) Calculate the conduction load through the glass walls and glass insets, ($Q_{cond\text{-}glass,wall}$), as follows:

$$Q_{cond\text{-}glass,wall} = \sum_{1}^{i} A_{glass,wall,i} \times \Delta T_{glass,wall,i} \times U_{glass,wall,i} \times n_i \qquad (3\text{-}8)$$

Where:

n_i = number of identical glass walls or insets of type i;

$U_{glass,wall,i}$ = thermal transmittance, U-value of the glass wall, of type i, Btu/h-ft²-°F;

$A_{glass,wall,i}$ = total surface area of all walk-in glass walls and insets of type i, ft²; and

$\Delta T_{glass,wall,i}$ = temperature differential between refrigerated and adjacent zones, °F.

3.1.3 Non-Glass Envelope Components

(a) Calculate the total surface area of the walk-in non-glass envelope ($A_{non\text{-}glass,tot}$), as follows:

$$A_{non\text{-}glass,tot} = \sum_{1}^{i} A_{walls,i} + \sum_{1}^{j} A_{floor,j} + \sum_{1}^{k} A_{ceiling,k} + \sum_{l}^{l} A_{non\text{-}glass\ doors,l} \qquad (3\text{-}9)$$

Where:

i,j,k,l = number of identical surface area regions of walls, floors, ceilings and non-glass doors, respectively, comprised of the same thickness and underlying materials and temperature differential—for example, if a walk-in has wall sections that are of two different thickness or of two different foam insulation products, i=2;

$A_{walls,i}$ = area of walls, of thickness and underlying materials of type i;

$A_{floor,j}$ = area of floor, of thickness and underlying materials of type j;

$A_{ceiling,k}$ = area of ceiling, of thickness and underlying materials of type k; and

$A_{non\text{-}glass\ door,l}$ = area of doors, of thickness and underlying materials of type l.

(b) Determine the R-value (Thermal resistance) of the walls, ceiling, and floor foam per 4.1, as follows:

(c) Calculate the conduction or transmission load through all non-glass components ($Q_{cond\text{-}non\text{-}glass}$), as follows:

$$Q_{cond\text{-}non\text{-}glass} = \sum_{1}^{i} \Delta T_i \times \frac{A_{walls,i}}{R_{non\text{-}glass,wall,i}} + \sum_{1}^{j} \Delta T_j \times \frac{A_{floor,j}}{R_{non\text{-}glass,floor,j}} + \sum_{1}^{k} \Delta T_k \times \frac{A_{ceiling,k}}{R_{non\text{-}glass,ceil,k}} + \sum_{1}^{l} \Delta T_l \times \frac{A_{non\text{-}glass\ doors,l}}{R_{non\text{-}glass,door,l}} \qquad (3\text{-}10)$$

Where:

$R_{non\text{-}glass,wall,\ i}$ = R-value of foam used in wall panels, of type i, h-ft²-°F/Btu;

$R_{non\text{-}glass,floor,\ j}$ = R-value of foam used in floor panels, of type j, h-ft²-°F/Btu;

$R_{non\text{-}glass,ceil,\ k}$ = R-value of foam used in ceiling panels, of type k, h-ft²-°F/Btu;

$R_{non\text{-}glass,door,\ l}$ = R-value of foam used in non-glass doors, of type l, h-ft²-°F/Btu;

$A_{walls,i}$ = area of wall, of thickness and underlying materials of type i;

$A_{floor,j}$ = area of floor, of thickness and underlying materials of type j;

$A_{ceiling,k}$ = area of ceiling, of thickness and underlying materials of type k; and

$A_{non\text{-}glass\ door,l}$ = area of doors, of thickness and underlying materials of type l.

ΔT_i = dry bulb temperature differential between internal and external air, of type i, °F

ΔT_j = dry bulb temperature differential between internal and external air, of type j, °F

ΔT_k = dry bulb temperature differential between internal and external air, of type k, °F

ΔT_l = dry bulb temperature differential between internal and external air, of type l, °F

3.1.4 Total Conduction Load

(a) Calculate total conduction load, Q_{cond}, (Btu/h), as follows:

$$Q_{cond} = Q_{cond\text{-}non\text{-}glass} + Q_{cond\text{-}glass,wall} + Q_{cond\text{-}glass,door} \qquad (3\text{-}11)$$

Where:

$Q_{cond\text{-}non\text{-}glass}$ = conduction load through non-glass components of walk-in, Btu/h; and

$Q_{cond\text{-}glass,wall}$ = total conduction load through walk-in glass walls and inset windows, Btu/h.

$Q_{cond\text{-}glass,door}$ = total conduction load through walk-in glass doors, Btu/h.

3.2 Infiltration Heat Gain

3.2.1 Steady State Infiltration Calculations

(a) Convert dry-bulb internal and external air temperatures from °F to Rankine (°R), as follows:

$$T_{DB\text{-}int,R} = T_{DB\text{-}int} + 459.67\ ^{o}F \qquad (3\text{-}12)$$

$$T_{DB\text{-}ext,R} = T_{DB\text{-}ext} + 459.67\ ^{o}F \qquad (3\text{-}13)$$

Where:

$T_{DB\text{-}int,R}$ = the dry-bulb temperature of internal walk-in air, °R; and

$T_{DB\text{-}ext,R}$ = the average dry-bulb temperature of air surrounding the walk-in, °R.

(b) Calculate the water vapor saturation pressure for the external air and the internal refrigerated air, as follows:

(1) If $T_{DB,R}$ < 491.67 °R (32 °F), using following equation to calculate water vapor saturation pressure (P_{ws} in psia):

$$P_{ws} = \exp\left[\left(\frac{C_1}{T_{DB,R}}\right) + C_2 + \left(C_3 \times T_{DB,R}\right) + \left(C_4 \times T_{DB,R}{}^2\right) + \left(C_5 \times T_{DB,R}{}^3\right) + \left(C_6 \times T_{DB,R}{}^4\right) + \left(C_7 \times \ln\left(T_{DB,R}\right)\right)\right] \qquad (3\text{-}14)$$

Where:

$T_{DB,R}$ = dry-bulb temperature in Rankine (for the internal or external air),

C_1 = −1.0214165 E+04,

C_2 = −4.8932428 E+00,

C_3 = −5.3765794 E−03,

C_4 = 1.9202377 E−07,

C_5 = 3.5575832 E−10,

C_6 = −9.0344688 E−14, and

C_7 = 4.1635019 E+00.

(2) If $T_{DB,R}$ > 491.67 °R (32 °F), use the following equation to calculate water vapor saturation pressure (P_{ws} in psia):

$$P_{ws} = \exp\left[\left(\frac{C_8}{T_{DB,R}}\right) + C_9 + \left(C_{10} \times T_{DB,R}\right) + \left(C_{11} \times T_{DB,R}{}^2\right) + \left(C_{12} \times T_{DB,R}{}^3\right) + \left(C_{13} \times \ln\left(T_{DB,R}\right)\right)\right] \qquad (3\text{-}15)$$

Where:

$T_{DB,R}$ = dry-bulb temperature (for the internal and external air), °R;

C_8 = −1.0440397 E+04;

C_9 = −1.1294650 E+01;

C_{10} = −2.7022355 E−02;

C_{11} = 1.2890360 E−05;

C_{12} = 2.4780681 E−09; and

C_{13} = 6.5459673 E+00.

(c) Calculate the absolute humidity ratio, ω, as follows:

$$\omega = \left[\frac{0.62198 \times \left(RH \times P_{ws}\right)}{14.696 - \left(RH \times P_{ws}\right)}\right] \qquad (3\text{-}16)$$

Where:

RH = relative humidity in decimal format (*e.g.,* 0.40 for 40 percent) (for the internal or external air), and

P_{ws} = water vapor saturation pressure.

(d) Calculate air specific volume, ν, (ft³/lb), as follows:

$$\nu = \left\lfloor (0.025210942) \times T_{DB,R} \times (1 + (1.6078 \times \omega)) \right\rfloor \qquad (3\text{-}17)$$

Where:

$T_{DB,R}$ = dry-bulb temperature (for the internal or external air), °R, and

ω = absolute humidity ratio.

(e) Calculate air density, air density (lb/ft³), as follows:

$$\rho = \frac{1}{\nu} \qquad (3\text{-}18)$$

Where:

ν = specific volume of air, ft³/lb.

(f) Calculate the enthalpy for the internal and external air, h, (Btu/lb), as follows:

$$h = \left(0.240 \times T_{DB,F}\right) + \left\lfloor \omega \times \left(1061 + \left(0.444 \times T_{DB,F}\right)\right) \right\rfloor \qquad (3\text{-}19)$$

Where:

$T_{DB,F}$ = dry-bulb temperature (for the internal or external air), °F; and

ω = absolute humidity ratio.

(g) Measure the steady-state infiltration rate per 4.2., V_{rate}(1/h)

(h) Convert V_{rate} to $\dot{V}$, (ft³/h), as follows:

$$\dot{V} = V_{rate} \times V_{ref\text{-}space} \qquad (3\text{-}20)$$

Where:

$V_{ref\text{-}space}$ = the total enclosed volume of the walk-in, ft³

V_{rate} = the infiltration rate per 4.2, 1/h

(i) Calculate the total infiltration load due to steady-state infiltration, Q_{infilt}, (Btu/h), as follows:

$$Q_{infilt} = \left(\rho_{ext} \times h_{ext} - \rho_{int} \times h_{int}\right) \times \dot{V} \qquad (3\text{-}21)$$

Where:

$\dot{V}$ = the infiltration rate measured from 4.2, ft³/h;

ρ_{int} = internal air density, lb/ft³;

ρ_{ext} = external air density, lb/ft³;

h_{int} = internal air enthalpy, Btu/lb; and

h_{ext} = external air enthalpy, Btu/lb.

3.2.2 Door Opening Infiltration Calculations

(a) Calculate the portion of time each doorway is open, D_t, as follows:

$$D_{t,i} = \frac{\left\lfloor \left(P \times \theta_p\right) + \left(60 \times \theta_o\right) \right\rfloor}{\left[3600 \times \theta_d\right]} \qquad (3\text{-}22)$$

Where:

i = index for each unique door. A unique door must be of the same geometry, underlying materials, function, and have the same temperature difference across the door

P = number of doorway passages (*i.e.,* number of doors opening events);

θ_p = door open-close time, seconds per opening P;

θ_o = time door stands open, minutes; and

θ_d = daily time period, h.

(1) Number of doorway passages: For display glass doors, P = 72, and all other doors, P= 60

(2) Door open-close time: For display glass doors, θ_p = 8 seconds. For non-glass doors, if an automatic door opener/closer is used, θ_p = 10 seconds and all other doors, θ_p = 15 seconds.

(3) Time door stands open: Display glass doors, θ_o = 0 minutes and all other doors, θ_o = 15 minutes.

(4) Daily time period: All walk-ins, θ_d = 24 hours.

(b) Calculate the density factor, F_m, for each door, as follows:

$$F_{m,i} = \left[\frac{2}{1 + \left(\frac{\rho_{int,i}}{\rho_{ext,i}}\right)^{1/3}}\right]^{3/2} \qquad (3\text{-}23)$$

Where:

i = index for each unique door

$\rho_{int,i}$ = internal air density, of door type i, lb/ft³; and

$\rho_{ext,i}$ = external air density, of door type i, lb/ft³.

(c) Calculate the infiltration load for fully established flow through each door, q_i (Btu/h), as follows:

$$q_i = 795.6 \times A_i \times \left(h_{ext,i} - h_{int,i}\right) \times \rho_{int,i} \times \left(1 - \frac{\rho_{ext,i}}{\rho_{int,i}}\right)^{1/2} \times \left(g \times H_i\right)^{1/2} \times F_{m,i} \qquad (3\text{-}24)$$

Where:

i = index for each unique door

A_i = doorway area, of door type i, ft²;

$h_{int,i}$ = internal air enthalpy, of door type i, Btu/lb;

$h_{ext,i}$ = external air enthalpy, of door type i, Btu/lb;

$\rho_{int,i}$ = internal air density, of door type i, lb/ft³;

$\rho_{ext,i}$ = external air density, of door type i, lb/ft³;

H_i = doorway height, of door type i, ft;

$F_{m,i}$ = density factor, of door type i, and

g = acceleration of gravity, 32.174 ft/s².

(d) Calculate the doorway infiltration reduction device effectiveness, E (%), at the same test conditions as described in steady-state infiltration section, as follows:

(1) A sample set must be taken once the tracer gas has uniformly dispersed in the internal space using the methodology described in 4.2.

(2) The test should be repeated exactly as described with the infiltration reduction device removed or deactivated.

(3) Calculate the infiltration reduction effectiveness:

$$E = \frac{V_{rate,with\text{-}device}}{V_{rate,without\text{-}device}} \qquad (3\text{-}25)$$

Where:

$V_{rate,with\text{-}device}$ = air infiltration rate, with door open and reduction device active, using 4.2, 1/h;

$V_{rate,without\text{-}device}$ = air infiltration rate, with door open and reduction device disabled or removed, using 4.2, 1/h.

(e) Calculate the total door opening infiltration load for a single door, Q_{open}, (Btu/h), as follows:

$$Q_{open,i} = q_i \times D_{t,i} \times D_f \times (1 - E_i) \times n_i \qquad (3\text{-}26)$$

Where:

q = infiltration load for fully established flow, Btu/h;

D_t = doorway open-time factor;

D_f = doorway flow factor, 0.8 for freezers and coolers (from ASHRAE Fundamentals);

E = effectiveness of doorway protective device, as measured by gas tracer test, %; and

n_i = number of doors (of the type i being considered in calculation).

(f) Calculate the total load due to door opening infiltration for all doors, Q_{open}, (Btu/h), as follows:

$$Q_{open} = \sum_{1}^{i} Q_{open,i} \qquad (3\text{-}27)$$

3.3 Energy Consumption Due To Total Heat Gain

(a) Calculate the total thermal load, Q_{tot}, (Btu/h), as follows:

$$Q_{tot} = Q_{infilt} + Q_{open} + Q_{cond} \qquad (3\text{-}28)$$

Where:

Q_{infilt} = total load due to steady-state infiltration, Btu/h;

Q_{cond} = total load due to conduction, Btu/h; and

Q_{open}= total load due to door opening infiltration, Btu/h.

(b) Select Energy Efficiency Ratio (EER), as follows:

(1) For coolers, use EER = 12.4 Btu/Wh

(2) For freezers, use EER = 6.3 Btu/Wh

(c) Calculate the total daily energy consumption due to thermal load, $Q_{tot,EER}$, (kWh/day), as follows:

$$Q_{tot,EER} = \frac{Q_{tot}}{EER} \times \frac{24}{1000} \times \frac{kW}{W} \times \frac{h}{day} \qquad (3\text{-}29)$$

Where:

Q_{tot} = total thermal load, Btu/h; and

EER = EER of walk-in (cooler or freezer), Btu/Wh.

3.4 Energy Consumption Related To Electrical Components. Electrical components contained within a walk-in could include, but are not limited to: heater wire (for anti-sweat or anti-freeze application); lights (including display door lighting systems); control system units; and sensors.

3.4.1 Direct Energy Consumption of Electrical Components

(a) Select the required value for percent time off for each type of electricity consuming device, PTO_t (%)

(1) For lights without timers, control system or other demand-based control, PTO = 25 percent. For lighting with timers, control system or other demand-based control, PTO = 50 percent.

(2) For anti-sweat heaters on coolers (if required): Without timers, control system or other demand-based control, PTO = 0 percent. With timers, control system or other demand-based control, PTO = 75 percent. For anti-sweat heaters on freezers (if required): Without timers, control system or other auto-shut-off systems, PTO = 0 percent. With timers, control system or other demand-based control, PTO = 50 percent

(3) For active infiltration reduction devices: Without control by door open or closed position, PTO = 25 percent. With control by door open or closed position for display doors, PTO = 99.33 percent. With control by door open or closed position for other doors, PTO = 99.17 percent.

(4) For all other electricity consuming devices: Without timers, control system, or other auto-shut-off systems, PTO = 0 percent. If it can be demonstrated that the device is controlled by preinstalled timers, control system or other auto-shut-off systems, PTO = 25 percent.

(b) Calculate the power usage for each type of electricity consuming device, $P_{comp,t}$, (kWh), as follows:

$$P_{comp,t} = P_{rated,t} \times (1 - PTO_t) \times n_t \times 24 \qquad (3\text{-}30)$$

Where:

t = index for each type of electricity consuming device with identical rated power;

$P_{rated,t}$ = rated power of each component, of type t, kW;

PTO_t = percent time off, for device of type t, %; and

n_t = number of devices at the rated power of type t.

(c) Calculate the total electrical energy consumption, P_{tot}, (kWh), as follows:

$$P_{tot,int} = \sum_{1}^{t} P_{comp,int,t} \qquad (3\text{-}31)$$

$$P_{tot,ext} = \sum_{1}^{t} P_{comp,ext,t} \qquad (3\text{-}32)$$

Where:

t = index for each type of electricity consuming device with identical rated power;

$P_{comp,int,\ t}$ = the energy usage for an electricity consuming device sited inside the walk-in envelope, of type t, kWh.

$P_{comp,ext,\ t}$ = the energy usage for an electricity consuming device sited outside the walk-in envelope, of type t, kWh.

3.4.2 Total Indirect Electricity Consumption Due to Electrical Devices

(a) Calculate the additional compressor load due to thermal output from electrical components contained within the envelope, C_{load}, (kWh), as follows:

$$C_{load} = P_{tot,int} \times \frac{3.412}{EER} \frac{\text{Btu}}{\text{Wh}} \qquad (3\text{-}33)$$

Where:

EER = EER of walk-in (cooler=12.4 or freezer=6.3), Btu/Wh;

$P_{tot,int}$ = The total electrical load due to components sited inside the walk-in envelope.

3.5 Total Normalized Energy Consumption

3.5.1 Total Energy Load

(a) Calculate the total energy load of the walk-in envelope per unit of surface area, E_{tot} (kWh/ft^2), as follows:

$$E_{tot,non\text{-}glass} = \frac{A_{non\text{-}glass,tot}}{A_{non\text{-}glass,tot} + A_{glass,tot}} \times \left[\frac{Q_{tot,EER}}{A_{non\text{-}glass,tot} + A_{glass,tot}} \right] \qquad (3\text{-}34)$$

$$E_{tot,glass} = \frac{A_{glass,tot}}{A_{non\text{-}glass,tot} + A_{glass,tot}} \times \left[\frac{Q_{tot,EER}}{A_{non\text{-}glass,tot} + A_{glass,tot}} \right] \qquad (3\text{-}35)$$

$$E_{tot,electric\text{-}device} = \frac{P_{tot} + C_{load}}{A_{non\text{-}glass,tot} + A_{glass,tot}} \qquad (3\text{-}36)$$

Where:

$Q_{tot,EER}$ = the total thermal load, kWh;
P_{tot} = the total electrical load, kWh;
$A_{non\text{-}glass,tot}$ = total surface area of the non-glass envelope, ft²;
$A_{glass,tot}$ = total surface area glass envelope, ft².
C_{load} = additional compressor load due to thermal output from electrical components contained within the envelope, kWh.

4.0 Test Methods and Measurements

4.1 R-Value Testing and Measurements

4.1.1 Measuring R-Value of Insulating Foam

(a) Follow the test procedure in ASTM C1303–08 exactly, except for these exceptions, (incorporated by reference, see § 431.303):

(1) Section 6.6.2, where several types of hot plate methods are recommended, ASTM C518–04, (incorporated by reference, see § 431.303), must be used for measuring the R-value

(2) Section 6.6.2.1, in reference to ASTM C518–04, the mean test temperature of the foam during R-value measurement must be:

(i) For freezers: − 6.7 ± 2 °C (20 ± 4 °F) with a temperature difference of 22 ± 2 °C (40 ± 4 °F)

(ii) For coolers: 12.8 ± 2 °C (55 ± 4 °F) with a temperature difference of 22 ± 2 °C (40 ± 4 °F)

(b) At least one sample set must be prepared, comprised of three stacks, while adhering to all preparation methods and uniformity specifications described in ASTM C1303–08, (incorporated by reference, see § 431.303).

(c) The value resulting LTTR for the foam shall be reported as R_{foam}, but for the purposes of calculations in this test procedure calculations, it will be converted to $R_{non\text{-}glass}$, as follows:

$$R_{non\text{-}glass} = R_{foam} \qquad (4\text{-}1)$$

Where:

R_{foam} = R-value of foam as measured by ASTM C1303–08, h-ft² − °F/Btu-in.

4.1.2 Determining R-Value of Concrete Floors

(a) For walk-ins in which the floor is concrete instead of insulated panels and has not been supplied by the walk-in manufacturer:

(1) Coolers: Use an R-value of 0.6 for floors of walk-in coolers.

(2) Freezers: Use an R-value of 28 for floors of walk-in freezers.

4.2 Steady State Infiltration Testing

(a) Follow the test procedure in ASTM E741–06 exactly, except for these changes and exceptions to the procedure, (incorporated by reference, see § 431.303):

(1) *Concentration decay method:* The ''concentration decay method'' must be used instead of other available options described in ASTM E741–06.

(2) *Gas Tracer:* CO_2 must be used as the gas tracer for all testing.

(3) *Air change rate:* Measure the air change rate in ft³/h, rather than the air change flow described in ASTM E741–06, (incorporated by reference, see § 431.303).

(4) *Spatial measurements:* Spatial measurements must be taken in a minimum of six locations or one location/20 ft² of floor area (whichever results in a greater number of measurements) at a height of 3 ft ± 0.5 ft, at a minimum distance of 2 ft ± 0.5 ft from the walk-in walls or doors.

(b) The internal air temperature for freezers and for coolers shall be ± 2 °C (4 °F) of the values shown in Table A.1.

(c) The external air temperature must be 24 °C (75 °F) ± 2.5 °C (5 °F) surrounding the walk-in.

(d) The test must be completed with all reach or walk-in doors closed.

(e) For testing the effectiveness ASTM E741–06 will be used, with the following changes or exceptions to the procedure:

(1) Within 3 minutes ± 30 seconds, with the infiltration reduction device in place, a hinged door should be opened at an angle greater than or equal to 90 degrees. The elapsed time, from zero degrees position (closed) to greater than or equal to 90 degrees (open) must be no longer than 5 seconds. The door must then be held at an angle greater than or equal to 90 degrees for 5 min ±5 seconds and then closed over a period no longer than 5 seconds. For non-hinged doors, the door must reach its maximum opened position, be held open, and reach a fully closed position for the same elapsed time as described above for hinge-type doors.

(2) The gas concentration must be sampled again after the door has been closed. Samples should continue being taken until the gas concentration is once again uniform within the walk-in.

5.0 Calculation of Daily Energy Consumption Coefficients (DECC)

The calculation procedures described in this section are based on the test measurements and other performance parameters discussed and described in the previous sections. The Daily Energy Consumption Coefficients are each combined to provide a linear expression of the daily energy consumption of any walk-in system with the construction features or component design parameters of a tested walk-in design with similar components and features. The DECC figures established using measurements on the test unit may be used to derive the daily electrical energy consumption of other walk-in systems in the same class constructed with similar components of construction as follows:

$$\begin{aligned} E_{tot,system} = {} & DECC_{non\text{-}glass} \times A_{non\text{-}glass,tot} + DECC_{glass} \times A_{glass,tot} + DECC_{infilt,disp_dr_opn} \times \\ & A_{disp_doors} + DECC_{disp_dr_device} \times n_{disp_doors} + DECC_{infilt,non\text{-}display,dr_opn} \times A_{non\text{-}display\text{-}doors} + \\ & DECC_{non\text{-}display\text{-}dr_device} \times n_{non\text{-}display\text{-}doors} + DECC_{light} \times V_{ref_space} + DECC_{ASH} \times A_{disp_doors} + \\ & DECC_{stir_fan} \times V_{ref_space} + DECC_{other} \times V_{ref_space} \end{aligned} \qquad \text{Eq. 5-1}$$

Where:

$DECC_{non\text{-}glass}$ = DECC for non-glass,
$A_{non\text{-}glass,tot}$ = total non-glass surface area,
$DECC_{glass,door}$ = DECC for glass doors,
$A_{glass,glass,\ tot}$ = total glass surface area, and
$DECC_{glass,wall}$ = DECC for glass walls and inset windows,
$A_{glass,wall,\ tot}$ = total glass wall and inset window surface area, and
$DECC_{infilt,disp_dr_opn}$ = DECC for opening of display type doors,
A_{disp_doors} = total area of display doors,
$DECC_{disp_dr_device}$ = DECC for infiltration reduction device in place for display doors,
n_{disp_doors} = total number of display doors,
$DECC_{infilt,non\text{-}display_,dr_opn}$ = DECC for non-display type doors,

$A_{non\text{-}display_doors}$ = total area of non-display type doors,

$DECC_{non\text{-}display_dr_device}$ = DECC for infiltration reduction device in place for non-display doors,

$n_{non\text{-}display_doors}$ = total number of non-display doors,

$DECC_{light}$ = DECC for lights,

V_{ref_space} = total enclosed refrigerated volume (ft³),

$DECC_{ASH}$ = DECC for anti-sweat heaters,

$DECC_{stir_fan}$ = DECC for motors used to drive air mixing fans, and

$DECC_{other}$ = DECC for other electricity consuming devices.

(a) Calculate $DECC_{non\text{-}glass}$ as follows:

$$Q_{tot,non\text{-}glass} = Q_{cond,non\text{-}glass} + Q_{infilt} \times \frac{A_{non\text{-}glass,tot}}{A_{non\text{-}glass,tot} + A_{glass,tot} + A_{glass,wall,tot}} \qquad (5\text{-}2)$$

$$E_{thermal,non\text{-}glass} = \frac{Q_{tot,non\text{-}glass}}{EER} \times \frac{24}{1000} \times \frac{h}{day} \times \frac{kW}{W} \qquad (5\text{-}3)$$

$$DECC_{non\text{-}glass} = \frac{E_{thermal,non\text{-}glass}}{A_{non\text{-}glass,tot}} \qquad (5\text{-}4)$$

Where:

$Q_{cond,non\text{-}glass}$ = conduction load due to non-glass surface area,

$Q_{cond,glass,wall}$ = conduction load due to glass wall and inset window surface area,

$Q_{cond,glass,door}$ = conduction load due to glass door surface area,

Q_{infilt} = load due to steady-state infiltration,

$A_{non\text{-}glass,tot}$ = total non-glass surface area,

$A_{glass,wall,tot}$ = total glass wall and inset window surface area,

$A_{glass,door,tot}$ = total glass door surface area,

EER = energy efficiency ratio for freezer or cooler, as described 3.3(b)

(b) Calculate $DECC_{glass,door}$ as follows:

$$Q_{tot,glass,door} = Q_{cond,glass,door} + Q_{infilt} \times \frac{A_{glass,door,tot}}{A_{non\text{-}glass,tot} + A_{glass,door,tot} + A_{glass,wall,tot}} \qquad (5\text{-}5)$$

$$E_{thermal,glass,door} = \frac{Q_{tot,glass,door}}{EER} \times \frac{24}{1000} \times \frac{h}{day} \times \frac{kW}{W} \qquad (5\text{-}6)$$

$$DECC_{glass,door} = \frac{E_{thermal,glass,door}}{A_{glass,door,tot}} \qquad (5\text{-}7)$$

Where:

$Q_{cond,non\text{-}glass}$ = conduction load due to non-glass surface area,

$Q_{cond,glass,wall}$ = conduction load due to glass wall and inset window surface area,

$Q_{cond,glass,door}$ = conduction load due to glass door surface area,

Q_{infilt} = load due to steady-state infiltration,

$A_{non\text{-}glass,tot}$ = total non-glass surface area,

$A_{glass,wall,tot}$ = total glass wall and inset window surface area,

$A_{glass,door,tot}$ = total glass door surface area,

EER = energy efficiency ratio for freezer or cooler, as described 3.3(b)

(c) Calculate $DECC_{glass,wall}$ as follows:

$$Q_{tot,glass,wall} = Q_{cond,glass,wall} + Q_{infilt} \times \frac{A_{glass,wall,tot}}{A_{non\text{-}glass,tot} + A_{glass,door,tot} + A_{glass,wall,tot}} \qquad (5\text{-}8)$$

$$E_{thermal,glass,wall} = \frac{Q_{tot,glass,wall}}{EER} \times \frac{24}{1000} \times \frac{h}{day} \times \frac{kW}{W} \qquad (5\text{-}9)$$

$$DECC_{glass,wall} = \frac{E_{thermal,glass}}{A_{glass,wall,tot}} \qquad (5\text{-}10)$$

Where:

$Q_{cond,non\text{-}glass}$ = conduction load due to non-glass surface area,

$Q_{cond,glass,wall}$ = conduction load due to glass wall and inset window surface area,

$Q_{cond,glass,door}$ = conduction load due to glass door surface area,

Q_{infilt} = load due to steady-state infiltration,

$A_{non\text{-}glass,tot}$ = total non-glass surface area,

$A_{glass,wall,tot}$ = total glass wall and inset window surface area,

$A_{glass,door,tot}$ = total glass door surface area,

EER = energy efficiency ratio for freezer or cooler, as described 3.3(b)

(d) Compute $DECC_{glass}$ in an identical manner to $DECC_{glass,door}$, described above.

(e) Compute $DECC_{infilt,disp_dr_opn}$ and $DECC_{disp_dr_device}$ as follows:

$$E_{infilt,disp_dr_opn} = \frac{Q_{open,disp_dr}}{EER} \times \frac{24hr}{1000} \qquad (5\text{-}11)$$

$$DECC_{infilt,disp_dr_opn} = \frac{E_{infilt,disp_dr_opn}}{A_{display_dr}} \qquad (5\text{-}12)$$

Where:

$Q_{open,disp_dr}$ = total infiltration load calculated for display door-opening events, and

EER = energy efficiency ratio for freezer or cooler

(f) Determine $DECC_{disp_dr_device}$ as follows:

(1) For passive infiltration reduction devices (*e.g.,* strip curtains), the $DECC_{disp_dr_device}$ is zero.

(2) For active infiltration reduction devices (*e.g.,* air curtains), $DECC_{disp_dr_device} = P_{comp}$ where P_{comp} is determined as in section 3.4.1 using the appropriate PTO (percent time off)

(g) Compute $DECC_{infilt,\ non\text{-}display_dr_opn}$ and $DECC_{non\text{-}display_dr_device}$ in the same manner as $DECC_{infilt,\ disp_dr_opn}$ and $DECC_{disp_dr_device}$ above.

(h) Compute $DECC_{ASH}$ in the following manner:

$$DECC_{ASH} = \frac{P_{comp,ASH}}{A_{disp\text{-}door}} \qquad (5\text{-}13)$$

Where:

$P_{comp,ASH}$ = total energy consumed by anti-sweat heaters (per section 3.4.1), and

$A_{disp\text{-}door}$ = total surface area of display doors.

(i) Compute $DECC_{stir_fan}$, for stirring (non-evaporator) fans in the following manner:

$$DECC_{stir_fan} = \frac{P_{comp,stir_fan}}{V_{ref\text{-}space}} \qquad (5\text{-}14)$$

Where:

V_{ref_space} = total volume of the refrigerated space (ft^3), and

$P_{comp,stirring_fan}$ = total energy consumed by stir fan(s) (per 3.4.1).

(j) Compute $DECC_{other}$ for all other electricity consuming devices: For all lights and other electrical loads, $P_{comp,j}$ is determined per the provisions of the section 3.4.1 and the $DECC_{other}$ is obtained by dividing the respective $P_{comp,j}$ by V_{ref_spac}.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4165/P.L. 111–120
To extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits. (Dec. 22, 2009; 123 Stat. 3478)

H.J. Res. 62/P.L. 111–121
Appointing the day for the convening of the second session of the One Hundred Eleventh Congress. (Dec. 22, 2009; 123 Stat. 3479)

S. 1472/P.L. 111–122
Human Rights Enforcement Act of 2009 (Dec. 22, 2009; 123 Stat. 3480)

Last List December 24, 2009

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2010

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
January 4	Jan 19	Jan 25	Feb 3	Feb 8	Feb 18	Mar 5	Apr 5
January 5	Jan 20	Jan 26	Feb 4	Feb 9	Feb 19	Mar 8	Apr 5
January 6	Jan 21	Jan 27	Feb 5	Feb 10	Feb 22	Mar 8	Apr 6
January 7	Jan 22	Jan 28	Feb 8	Feb 11	Feb 22	Mar 8	Apr 7
January 8	Jan 25	Jan 29	Feb 8	Feb 12	Feb 22	Mar 9	Apr 8
January 11	Jan 26	Feb 1	Feb 10	Feb 16	Feb 25	Mar 12	Apr 12
January 12	Jan 27	Feb 2	Feb 11	Feb 16	Feb 26	Mar 15	Apr 12
January 13	Jan 28	Feb 3	Feb 12	Feb 17	Mar 1	Mar 15	Apr 13
January 14	Jan 29	Feb 4	Feb 16	Feb 18	Mar 1	Mar 15	Apr 14
January 15	Feb 1	Feb 5	Feb 16	Feb 19	Mar 1	Mar 16	Apr 15
January 19	Feb 3	Feb 9	Feb 18	Feb 23	Mar 5	Mar 22	Apr 19
January 20	Feb 4	Feb 10	Feb 19	Feb 24	Mar 8	Mar 22	Apr 20
January 21	Feb 5	Feb 11	Feb 22	Feb 25	Mar 8	Mar 22	Apr 21
January 22	Feb 8	Feb 12	Feb 22	Feb 26	Mar 8	Mar 23	Apr 22
January 25	Feb 9	Feb 16	Feb 24	Mar 1	Mar 11	Mar 26	Apr 26
January 26	Feb 10	Feb 16	Feb 25	Mar 2	Mar 12	Mar 29	Apr 26
January 27	Feb 11	Feb 17	Feb 26	Mar 3	Mar 15	Mar 29	Apr 27
January 28	Feb 12	Feb 18	Mar 1	Mar 4	Mar 15	Mar 29	Apr 28
January 29	Feb 16	Feb 19	Mar 1	Mar 5	Mar 15	Mar 30	Apr 29